

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 7. BANKING AND SECURITIES

### PART 2. TEXAS DEPARTMENT OF BANKING

#### CHAPTER 33. MONEY SERVICES BUSINESSES

##### 7 TAC §33.54

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §33.54, concerning an exemption for registered securities dealers and agents of securities dealers (securities agents) without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8138). The rule will not be republished.

##### Summary of New Rule

New subsection (a) provides that the terms "agent," "dealer" and "securities" have the meanings assigned by the Texas Securities Act.

New subsection (b) provides that a dealer or an agent of a dealer who, in the course of providing dealer or agent services as to securities, receives or has control over a customer's money or monetary value, is exempt from money transmission licensing requirements if they are: 1) registered and in good standing with the board as a dealer or dealer's agent; 2) only conducting money transmission as defined by the Texas Finance Code to the extent reasonable and necessary to provide securities dealer or securities agent services for contractual customers.

The department regulates money transmission, defined by the Texas Finance Code, §151.301(b)(4) as the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location. A money transmission license is required to engage in the business of money transmission in Texas. See Texas Finance Code, §151.302(a).

Many registered securities dealers and securities agents include money transmission in their business models and as part of the services provided to their clients. Both securities dealers and securities agents, however, are already regulated by, and subject to registration requirements enforced by, the Texas State Securities Board. As such, further regulation by the department would be duplicative to the extent that such persons operate only as securities dealers and securities agents. The department does not intend for this rule to exempt securities dealers and securities agents from money transmission licensing if they perform separate money transmission activities as defined by the Texas Finance Code, unrelated to their operation as securities dealers or agents.

Securities dealers and securities agents whose business includes non-securities related activities, that may constitute money transmission under the Texas Finance Code, should submit their business plan for review and obtain a determination letter from the Texas Department of Banking.

The department received no comments regarding the proposed new rule.

##### Statutory Authority

The new rule is adopted pursuant to Texas Finance Code, §151.102(a), which authorizes the commission to adopt rules necessary or appropriate to preserve and protect the safety and soundness of money services businesses and protect the interests of purchasers of money services and the public.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000689

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Effective date: March 5, 2020

Proposal publication date: December 27, 2019

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## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 3. OIL AND GAS DIVISION

##### 16 TAC §3.40

The Railroad Commission of Texas adopts amendments to §3.40, relating to Assignment of Acreage to Pooled Development and Proration Units, with changes from the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6647). The amendments are adopted to allow the same surface acreage to be assigned to more than one well in an unconventional fracture treated (UFT) field when mineral ownership is severed at different depths below the surface. Section §3.40(e)(2)(B), (e)(3), and (g) are adopted with changes to address comments as described in detail below. The amendments adopted with a change in subsection (e)(2)(F) include the effective date of these amendments for purposes of

prohibiting field rule applications regarding multiple assignment of acreage in unconventional fracture treated (UFT) fields for two years. The rule will be republished.

The Commission adopts amendments to §3.40 to uphold the Commission's statutory requirements to prevent waste and protect correlative rights in light of significant changes occurring in the exploration and production industry in Texas. Specifically, the Commission determined there are circumstances in which the assignment of acreage to more than one well in a field is necessary to prevent waste and protect correlative rights. The basis for this determination arises from primarily two factors: (1) severed ownership of mineral rights at depth; and (2) technological advances that have unlocked heretofore inaccessible hydrocarbon resources in UFT fields.

In December 2013, the Commission recognized the limitations of §3.40 as applied to the Spraberry (Trend Area) Field and signed a final order (O&G Docket No. 7C-0283443) creating a "Rule 40 Exception Field" to allow acreage in the Spraberry to be assigned twice - to a well in the shallow portion of the field and a well in the deep portion. Since 2013, the issue with depth severances has expanded so that more fields are experiencing the same limitations with §3.40. In addition, private lease agreements are creating multiple depth severances such that even allowing duplicate assignment of acreage to wells in shallow and deep portions of a field may still limit development in UFT fields. For example, private lease agreements and other land transactions for a tract may create five or more distinct ownership intervals that vary by depth within a single field. Under current §3.40, the operator could develop one ownership interval. Under existing field rules in the Spraberry, an operator could develop two. In either scenario, at least three intervals could not be developed.

In 2016, the Commission established UFT fields to address the efficient production of hydrocarbons from reservoirs that exhibited certain "unconventional" characteristics. A UFT field is a field in which horizontal drilling and hydraulic fracturing must be used in order to recover resources from all or part of the field and which is developed using either vertical and horizontal drilling techniques. This designation includes geologic formations in which the drainage of a wellbore is based upon the area reached by the hydraulic fracturing treatments rather than conventional flow patterns. That is, in UFT fields hydrocarbon fluids do not flow beyond the spatial limits of the stimulated reservoir volume. Efficient production is not dependent upon conventional reservoir structure, stratigraphy, or native reservoir properties, but on the quality and characteristics of the fracture stimulation treatments. Therefore, the Commission recognized the need for special provisions for UFT fields through the amendments to §3.86, relating to Horizontal Drainhole Wells, adopted in 2016. Similarly, the Commission now adopts amendments to §3.40 to allow the same surface acreage to be assigned to more than one well in a UFT field when mineral ownership is severed below the surface.

The Commission received 12 comments on the rule proposal, five of which were from associations. Elk River Resources, the General Land Office, and Rio Oil and Gas expressed overall support for the amendments. The Commission appreciates this support.

Adopted amendments to §3.40(e)(2) provide that where ownership of the right to drill or produce from a tract in a UFT field is divided horizontally, acreage may be assigned to more than one well provided that the wells having the same wellbore profile are not completed in the same ownership interval. "Divided horizon-

tally" means that ownership of the right to drill or produce has been divided into depth intervals defined by total vertical depth, depth relative to a specific geological contact, or some other discriminator. The Texas Oil and Gas Association (TXOGA) and Pioneer Natural Resources USA, Inc. (Pioneer) commented requesting that the Commission alter the definition of "divided horizontally" to match language in §3.26, which uses "identical royalty interest and working interest ownership in identical percentages." The Commission declines to use language from §3.26 because it does not capture the issue that initiated this rulemaking; namely, in certain fields, private leases with depth severance clauses create more than one ownership interval beneath the surface and §3.40's limitation on acreage assignment was prohibiting production of the additional intervals.

Amendments in §3.40(e)(2)(B) require that within 15 days prior to filing its drilling permit application, an applicant for multiple assignment of acreage shall identify any well, including wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points. The applicant shall then send written notice of its application to the P-5 address of record of each Commission-designated operator of those wells. Apache Corporation (Apache), the Permian Basin Petroleum Association (PBPA), the Texas Alliance of Energy Producers (Alliance), Pioneer, and TXOGA asked for clarification on what action must be taken within 15 days of filing the drilling permit application. To ensure the notice list is based on the most current information, the action that must occur within 15 days of filing is identifying the wells within the 1/2 mile radius. However, because the Commission recognizes the amount of activity occurring in UFT fields, the applicant's responsibility to identify wells within the 1/2 mile radius ends once the applicant sends notice. The applicant does not have a continuing burden to locate wells within the 1/2 mile radius after notice is sent. The Commission adopts §3.40(e)(2)(B) with a change to clarify its intent. The Commission also adopts a change to remove "each" from "each Commission-designated operator" as requested by Pioneer and TXOGA. The new provision reads: "No more than 15 days prior to filing its drilling permit application, the applicant shall identify any well, including any wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points and, upon identification of all applicable wells, send written notice of its application to the P-5 address of record of the Commission-designated operator of the wells determined to fall within the one-half mile radius."

The Alliance, Diamondback Energy (Diamondback), Pioneer, and TXOGA requested clarification on a statement in the proposal preamble regarding how an applicant must locate wells within the 1/2 mile radius. The preamble stated that an applicant must use all available resources, including the Commission's GIS Public Viewer (GIS). The Commission did not intend "all available resources" to require the applicant to conduct research outside of GIS. The intent was to make clear that the responsibility to locate wells and notify operators within the 1/2 mile radius falls on the applicant. The Commission wants to prevent mistakes in notice if GIS is temporarily not working. Commission staff will consult GIS to verify the notice list, but the Commission's intent is that the applicant use GIS as well as information within its possession or actual knowledge to identify wells and notify operators.

Apache, Diamondback, Henry Resources LLC (Henry), the Alliance, and PBPA oppose the 1/2 mile radius notification standard proposed in §3.40(e)(2)(B). The commenters believe 1/2

mile is overly burdensome. Several of these comments stated that Rule 37 (16 TAC §3.37), the Commission's spacing rule, addresses drainage concerns by requiring notice to persons who may be affected by a proposed well and, therefore, additional notice in §3.40 is unnecessary. First, the Commission notes that Rule 37 and applicable field rules governing lease line spacing are not applied horizontally; these rules only require notice to persons within a specified distance from the vertical lease line. Thus, the spacing rules do not require notice to persons who are within the required distance from the wellbore. Second, Commission staff conducted multiple workshops and circulated an informal draft prior to formally proposing the amendments to §3.40. The notice provision underwent numerous revisions throughout this process; however, the 1/2 mile radius requirement was the version with the most support from stakeholders, including Commission staff. Therefore, the Commission declines to adopt the notice provision with amendments.

Relatedly, the Alliance, the Texas Independent Producers and Royalty Owners Association (TIPRO), Pioneer, and TXOGA requested that the Commission clarify the notice requirement in subsection (e)(2)(B) is a courtesy notice. The Commission agrees that the notice is a courtesy notice, meaning that if the person notified objects to the permit, the objection will not prevent the drilling permit application from being approved administratively. Instead, the person objecting may request a hearing to address his or her complaint in accordance with Commission Rule §1.23 of this title, relating to Complaint Proceedings. TXOGA and Pioneer further requested that the Commission create a standard notice form to ensure those noticed understand the notice is a courtesy notice. The Commission appreciates this suggestion but does not propose a standard notice form concurrent with the rule adoption.

Regarding §3.40(e)(2)(B), the Alliance requested new language to clarify that if an applicant provides waivers from those required to be noticed, then the application can be approved administratively. The Commission declines to adopt the suggested change. The Commission notes that because the required notice does not create a right to protest, an application can be approved administratively without waivers. However, when applicable, it is generally Commission practice to allow administrative approval if waivers from affected persons are received.

The Alliance also asked whether re-noticing would be required when a well location is amended. The Commission notes that re-noticing would not be required if a new well appears within the 1/2 mile radius due to the amended location and the operator of the new well already received notice. Re-noticing would be required when a new well appears within the 1/2 mile radius due to the amended location and the operator of that well did not already receive notice. For example, Operator ABC has a well, Well X, located within the 1/2 mile radius as described in §3.40(e)(2)(B), so Operator ABC is provided courtesy notice before the applicant files its drilling permit application. The applicant's well location is then amended and now Well Y and Well 5 also appear in the 1/2 mile radius. Well Y is operated by Operator ABC and Well 5 is operated by Operator 123. Because Operator ABC already received notice due to Well X, the applicant does not have to re-notice Operator ABC. However, because Operator 123 was not noticed prior to the application being filed, the applicant must now notice Operator 123. Nonetheless, the Commission notes that Commission staff will analyze whether new notice is required on a case-by-case basis and may require new notice due to an amended well location in situations other than those described above.

The Texas Land and Mineral Owner Association (TLMA) requested that all unleased mineral interest owners receive notice in addition to operators. The Commission declines to make this change because §3.40 addresses acreage assignment and acreage can only be assigned by an operator.

The Commission received seven comments on §3.40(e)(2)(F). Apache, PBPA, and TIPRO requested that concerns about field rule amendments be limited to the rule preamble and that the two-year prohibition on field rule amendments be removed from the rule language. The Alliance also requested that the two-year prohibition be removed. The Commission declines to remove the two-year prohibition. Commission staff must develop and learn new procedures, including electronic data management systems, to implement the amendments. If, after adoption of amendments to §3.40, field rule amendments were adopted to create different requirements for each field, then Commission staff would have to develop and learn different procedures for each field. Therefore, the Commission adopts a hold on field rule applications to allow Commission staff time to test these procedures and resolve any issues before making piecemeal changes. The Commission also notes that the temporary prohibition will only apply to UFT fields and only to field rule applications addressing multiple assignment of acreage. In addition, operators will still have the opportunity to seek relief from §3.40 by applying for an exception for an individual well or lease.

The Commission agrees with comments from Diamondback, Pioneer, and TXOGA that the provisions in §3.40(e)(2)(F) only govern over field rules existing at the time of the rule amendment, not those field rules to be adopted after the two-year prohibition ends. Further, the prohibition only applies to field rules that address duplicate and/or multiple assignment of acreage.

Finally, Pioneer and TXOGA requested confirmation that all permits granted under existing field rules remain valid and asked the Commission to allow field rule revisions to provide relief for conservation, waste prevention, or correlative rights protection. The Commission confirms that permits granted under existing field rules remain valid. As mentioned above, operators will have the opportunity to seek an exception for an individual well or lease to provide relief for conservation, waste prevention, or correlative rights protection.

The Commission received five comments on §3.40(e)(3), which allows the Commission to require non-confidential information supporting the operator's right to drill or produce in the interval indicated on the operator's drilling permit application. Apache, Diamondback, Henry, and PBPA asked that subsection (e)(3) be removed. TIPRO also opposed the provision, stating that an operator should be able to refuse the request to provide such information and go to hearing instead. The Commission agrees that a request for hearing would be allowed. TIPRO also requested clarification on what type of non-confidential information would be required.

The Commission adopts §3.40(e)(3) with a change to address the comments. Commission staff may request information at the completion stage to ensure the operator completed the well in the interval the operator claims to have the right to drill or produce. Therefore, subsection (e)(3) was revised to clarify that intent.

Apache and PBPA expressed support for §3.40(f). The Commission appreciates this support.

The Commission received three comments on §3.40(g). The Alliance requested that the Commission not limit the opportunity

for an administrative exception to UFT fields because a lease severance can exist in a field regardless of whether the field has the reservoir rock parameters of a UFT field. The Commission declines to provide an administrative exception for fields that do not qualify under §3.40(e). The administrative process for UFT fields presupposes certain reservoir drainage characteristics that are common to UFT fields. An administrative process for a field without those characteristics would include requirements appropriate for that field. As those considerations were not included in the proposal, they are beyond the scope of the rulemaking and cannot be adopted without additional notice.

Pioneer and TXOGA requested that the amendments not limit the opportunity for an exception to non-UFT fields with depth severances. The Commission recognizes that an individual lease exception to §3.40 is currently allowed after notice and opportunity for hearing and the ability to request that exception is not limited to fields where depth severances exist. Part of the intent of §3.40(g) was to formalize the process for obtaining an exception to §3.40 through a hearing and, therefore, the Commission adopts subsection (g) with changes to clarify and augment the existing process.

The Commission received four comments on §3.40(g)(2), which contains the notice requirements when an operator seeks an exception and does not qualify for an exception under §3.40(e). Apache, Henry, and PBPA expressed opposition to the notice requirement and suggested the Commission use the notice requirement from the §3.38 exception provision addressed in §3.86. The Commission agrees that the language from §3.86 is appropriate if an exception is requested for a well in a UFT field that does not qualify for the exception in (e). The Commission adopts (g)(2) with a change to require notice as required by §3.86 if the subject well is in a UFT field. However, because the procedure in §3.40(g) is not limited to horizontal wells or UFT fields, the Commission also adopts (g)(2) with a change to require traditional Rule 38 notice when an operator seeks an exception for a well in a non-UFT field.

Finally, TLMA requested that all unleased mineral interest owners receive notice under subsection (g). The revised notice provision requires notice to unleased mineral interest owners.

The Commission appreciates all the comments and the participation from stakeholders throughout the process of amending §3.40.

The Commission did not receive comments on the following subsections of §3.40 but summarizes the amendments as follows:

Adopted amendments in §3.40(d) clarify the term "multiple assignment of acreage," and amendments to §3.40(e)(1) reorganize existing language related to assignment of acreage to horizontal and vertical wells.

Adopted amendments to §3.40(e)(2)(A) require that an application for multiple assignment of acreage under subsection (e) show the upper and lower limits of the operator's ownership interval. The interval is measured as the total vertical depth from the surface. The Commission understands that, due to geological characteristics, the total vertical depth provided by an operator will be an approximation. However, Commission staff needs this information to conduct required due diligence before granting a drilling permit.

Adopted amendments to §3.40(e)(2)(C) provide a right to request a hearing to a person who was entitled to notice but claims he or she did not receive it. If the Commission determines at a

hearing that the applicant did not provide the notice as required by this subsection, the Commission may cancel the permit.

Adopted amendments to §3.40(e)(2)(D) provide a method for obtaining copies of directional surveys, and amendments to §3.40(e)(2)(E) clarify that field density rules will apply separately to each ownership interval.

Adopted amendments to §3.40(e)(2)(F) clarify that upon the effective date of the rule amendments, March 3, 2020, existing field rules that allow assignment of acreage to more than one well in a UFT field are superseded by §3.40. Subparagraph (F) also prohibits field rule applications regarding multiple assignment of acreage in UFT fields until two years after March 3, 2020. Section 3.40(e)(2)(F) is adopted with a change to include the exact effective date of March 3, 2020, which was unknown at the time the amendments were proposed.

Adopted new §3.40(f) allows the Oil and Gas Director or the director's delegate to resolve existing instances of multiple assignment of acreage upon an operator's written request and for good cause shown. If such a request is administratively denied, the operator shall have a right to request a hearing to review the denial. The term "existing" is not meant to apply only to instances of multiple assignment of acreage existing at the time of the adoption of the amendments but is intended to apply to instances of multiple assignment of acreage existing at the time of the written request for relief. In other words, the relief adopted in subsection (f) can be requested for good cause when acreage is assigned to more than one well and the subject wells have already been drilled or completed.

Adopted new §3.40(g) formalizes the process for obtaining an exception to §3.40. If an operator does not qualify for multiple assignment of acreage under subsection (e), acreage cannot be assigned to more than one well unless the operator is granted an exception after public hearing held after notice to all persons described in subsection (g).

The Commission adopts the amendments to §3.40 pursuant to Texas Natural Resources Code §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 102, which gives the Commission the authority to establish pooled units for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste; and Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells, preserving a record of the drilling of wells, and requiring records to be kept and reports to be made.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.201, 85.202 and Chapter 102.

Cross reference to statute: Texas Natural Resources Code Chapters 81, 85, and 102.

*§3.40. Assignment of Acreage to Pooled Development and Proration Units.*

(a) An operator may pool acreage, in accordance with appropriate contractual authority and applicable field rules, for the purpose of creating a drilling unit or proration unit by filing an original certified plat delineating the pooled unit and a Certificate of Pooling Authority, Form P-12, according to the following requirements:

(1) Each tract in the certified plat shall be identified with an outline and a tract identifier that corresponds to the tract identifier listed on Form P-12.

(2) The operator shall provide information on Form P-12, accurately and according to the instructions on the form.

(A) The operator shall separately list each tract committed to the pooled unit by authority granted to the operator.

(B) For each tract listed on Form P-12, the operator shall state the number of acres contained within the tract. The operator shall indicate by checking the appropriate box on Form P-12 if, within an individual tract, there exists a non-pooled and/or unleased interest.

(C) The operator shall state on Form P-12 the total number of acres in the pooled unit. The total number of acres in the pooled unit shall equal the sum of all acres in each tract listed. The total acreage shown on Form P-12 shall only include tracts in which the operator holds a leased or ownership interest in the minerals or other contractual authority to include the tract in the pooled unit.

(D) If a pooled unit contains more tracts than can be listed on a single Form P-12, the operator shall file as many additional Forms P-12 as necessary to list each pooled tract individually. The additional Forms P-12 shall be numbered in sequence.

(E) The operator shall provide the requested identification and contact information on Form P-12.

(F) The operator shall certify the information on Form P-12 by signing and dating the form.

(3) Failure to timely file the required information on the certified plat or Form P-12 may result in the dismissal of the W-1 application. "Timely" means within three months of the Commission notifying the operator of the need for additional information on the certified plat and/or Form P-12.

(4) The operator shall file Form P-12 and a certified plat in the following instances:

(A) with the drilling permit application when two or more tracts are joined to form a pooled unit for Commission purposes;

(B) with the initial completion report if any information reported on Form P-12 has changed since the filing of the drilling permit application;

(C) to designate a pooled unit formed after a completion report has been filed; or

(D) to designate a change in a pooled unit previously recognized by the Commission. The operator shall file any changes to a pooled unit in accordance with the requirements of §3.38(d)(3) of this title (relating to Well Densities).

(b) If a tract to be pooled has an outstanding interest for which pooling authority does not exist, the tract may be assigned to a unit where authority exists in the remaining undivided interest provided that total gross acreage in the tract is included for allocation purposes, and the certificate filed with the Commission shows that a certain undivided interest is outstanding in the tract. The Commission may not allow an operator to assign only the operator's undivided interest out of a basic tract where a nonpooled interest exists.

(c) The nonpooled undivided interest holder retains the development rights in the basic tract. If the development rights are exercised, the Commission grants authority to develop the basic tract, and the well is completed as a producing well on the basic tract, then the entire interest in the basic tract and any interest pooled with another tract shall

be assigned to the well on the basic tract for allocation purposes. Splitting of an undivided interest in a basic tract between two or more wells on two or more tracts is not acceptable.

(d) Multiple assignment of acreage is not permitted, except as provided in subsection (e) of this section. Multiple assignment of acreage is defined as the assignment of the same surface acreage to more than one well in a field. However, this limitation shall not prevent the reformation of development or proration units so long as:

(1) no multiple assignment of acreage occurs; and

(2) such reformation does not violate other conservation regulations.

(e) In unconventional fracture treated (UFT) fields defined in §3.86 of this title (relating to Horizontal Drainhole Wells), multiple assignment of acreage is permissible as follows:

(1) Assignment of acreage to both a horizontal well and a vertical well for drilling and development or for allocation of allowable is permissible. The field density rules apply independently to horizontal wells and vertical wells. Acreage assigned to horizontal wells shall not count against acreage assigned to vertical wells, and acreage assigned to vertical wells shall not count against acreage assigned to horizontal wells.

(A) Acreage assigned to horizontal wells for drilling and development or for allocation of allowable shall be permissible so long as the horizontal well density complies with §3.38 of this title and/or special field rules, as applicable. For the purposes of this section, stacked lateral wells as defined in §3.86(a)(10) of this title are not considered assignment of acreage to multiple horizontal wells.

(B) Acreage assigned to vertical wells for drilling and development or for allocation of allowable shall be permissible so long as the vertical well density complies with §3.38 of this title and/or special field rules, as applicable.

(2) Where ownership of the right to drill or produce from a tract in a UFT field is divided horizontally, acreage may be assigned to more than one well provided that the wells having the same wellbore profile are not completed in the same ownership interval. For purposes of this section "divided horizontally" means that ownership of the right to drill or produce has been separated into depth intervals defined by total vertical depth, depth relative to a specific geological contact, or some other discriminator. A tract may be "divided horizontally" even where one operator has the right to drill or produce multiple intervals on the same tract of land in the same field.

(A) To apply for multiple assignment of acreage under this subsection, the operator's drilling permit application shall indicate the upper and lower limits of the operator's ownership interval. The interval shown on the drilling permit application is measured as the total vertical depth from the surface.

(B) No more than 15 days prior to filing its drilling permit application, the applicant shall identify any well, including any wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points and, upon identification of all applicable wells, send written notice of its application to the P-5 address of record of the Commission-designated operator of the wells determined to fall within the one-half mile radius. The applicant shall attach to the notice a certified plat that clearly depicts the projected path of the wellbore and the one-half mile radius surrounding the wellbore from the first take point to the last take point. Copies of the notice, service list, and certified plat shall be filed with the drilling permit application.

(C) If any person entitled to notice under this subsection did not receive notice, that person may request a hearing. If the Commission determines at a hearing that the applicant did not provide the notice as required by this subsection, the Commission may cancel the permit.

(D) To mitigate the potential for wellbore collisions, the applicant shall provide copies of any directional surveys to the persons entitled to notice under this subsection, upon request, within 15 days of the applicant's receipt of a request.

(E) Where ownership of the right to drill or produce from a tract in a UFT field is divided horizontally, the field density rules for the field will apply separately to each ownership interval, such that proration units on a tract above and below a division of ownership are accounted for separately.

(F) Field rules that allow assignment of acreage to more than one well in UFT fields are superseded by this rule amendment, as of the effective date of this amendment, March 3, 2020. If, prior to the effective date of this amendment, an operator has assigned acreage to more than one well pursuant to previous field rules, such multiple assignment remains valid. After March 3, 2020, multiple assignment of acreage is not permissible unless the applicant complies with the requirements of this subsection. The Commission will not consider any applications for field rules regarding multiple assignment of acreage in UFT fields until two years after March 3, 2020.

(3) Upon request by the Commission, an operator shall provide non-confidential information verifying that the well was completed in the interval indicated on its drilling permit application.

(f) Upon an operator's written request and for good cause shown, the director or the director's delegate may resolve an existing instance of multiple assignment of acreage. If such a request is administratively denied, the operator shall have a right to request a hearing to review the denial.

(g) If an operator does not qualify for multiple assignment of acreage under subsection (e) of this section, acreage cannot be assigned to more than one well unless the operator is granted an exception after a public hearing held after notice to all persons described in paragraph (2) of this subsection.

(1) An operator applying for an exception must show:

(A) an exception is necessary to prevent waste, prevent confiscation, or protect correlative rights; and

(B) the wells are not completed in the same ownership interval.

(2) If an exception is sought for a well in a UFT field, the operator shall file with its application for an exception the names and mailing addresses of persons described in §3.86(k)(2), relating to Horizontal Drainhole Wells. If an exception is sought for any other well, the operator shall file with its application for an exception the names and mailing addresses of all the operators and unleased mineral interest owners of all adjacent offset tracts, and the operators and unleased mineral interest owners of all tracts nearer to the proposed well than the prescribed minimum lease-line spacing distance. In the event the applicant is unable after due diligence to locate the whereabouts of any person to whom notice is required by this subsection, the applicant shall publish notice of this application pursuant to §1.43 of this title (relating to Notice by Publication).

(3) To mitigate the potential for wellbore collisions, the applicant shall provide copies of any directional surveys to the persons entitled to notice under this subsection, upon request, within 15 days of the applicant's receipt of a request.

(h) If an offset, overlying, or underlying operator, or a lessee or unleased mineral interest owner determines that any operator has assigned identical acreage to two or more concurrently producing wells in violation of this section, the operator or owner may file a complaint with the Hearings Division to request that a hearing be set to consider the issues raised in the complaint. If the Commission determines after a hearing on the complaint that acreage has been assigned in violation of this section, the Commission may curtail or cancel the allowable production rate for any affected wells and/or may cancel the Certificate of Compliance (Form P-4) for any affected wells for failure to comply with this section.

(i) An operator shall file Form P-16, Acreage Designation, with each drilling permit application and with each completion report for horizontal wells in any field and for all wells in designated UFT fields as defined in §3.86 of this title. An operator assigning surface acreage to more than one well pursuant to subsection (g) of this section shall file Form P-16, Acreage Designation, with each drilling permit application and with each completion report. The operator may file Form P-16 with each drilling permit application and with each completion report for all other wells. The operator may also file proration unit plats for individual wells in a field.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2020.

TRD-202000583

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Effective date: March 3, 2020

Proposal publication date: November 8, 2019

For further information, please call: (512) 475-1295



## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

#### SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

##### 16 TAC §25.97

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.97, relating to Line Inspection and Safety, without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7272). The rule will not be republished.

The new rule will implement the safety reporting provisions in Public Utility Regulatory Act (PURA) §38.102, which was enacted by the 86th Texas Legislature in House Bill 4150 (HB 4150). HB 4150 also added §§35.010 and 36.066, and amended §38.004. These changes to PURA became effective on September 1, 2019. This new rule is adopted under Project Number 49827.

The commission received written initial comments on the new rule from Texas Electric Cooperatives, Inc. (TEC); Texas Public Power Association (TPPA); Oncor Electric Delivery Company LLC (Oncor); Texas-New Mexico Power Company (TNMP); AEP Texas Inc., Southwestern Electric Power Company, and Electric Transmission Texas, LLC (collectively, AEP Companies); and El Paso Electric Company (EPE). Written reply comments were received from TEC.

There was no request for a public hearing.

#### General Comments on the Rulemaking

##### *Comments on the Inclusion of Regulatory Asset Language in PURA §§35.010 and 36.066*

Every commenter favored the inclusion of language addressing new PURA §§35.010 and 36.066, which authorize affected entities to record the expenses associated with compliance with §38.102 as a regulatory asset for later recovery in rates established by the commission. Commenters requested clarification regarding items eligible for expense recovery and which rate mechanisms are the appropriate vehicle in which to request recovery. TEC suggested that this clarification could be provided in this rule or in a subsequent rulemaking.

##### *Commission Response*

The commission declines to address cost recovery in this rulemaking. The statutory provisions provide sufficient authority for electric utilities, electric cooperatives, and municipally owned utilities to record and recover the costs incurred to comply with the new reporting requirements. The commission may address these provisions of PURA in a future rulemaking.

##### *Comments on the Inclusion of Liability Language in PURA 38.102(h)*

Oncor and EPE requested that the rule include language addressing PURA §38.102(h) regarding the inadmissibility of the reports provided under 16 TAC §25.97 in criminal or civil proceedings against a reporting utility or the entity's employees, directors, or officers.

##### *Commission Response*

The commission declines to adopt the suggested change. PURA § 38.102(h) clearly states the limitations on the use of information reported to the commission as a result of HB 4150 in civil or criminal proceedings. This language is not needed in a commission rule, because it does not apply to commission proceedings and does not concern matters subject to the commission's jurisdiction.

##### *Comments on Due Dates for the Initial Reports*

The proposed rule requires affected entities to begin filing three new reports with the commission - an Employee Training Report, a Five-Year Report, and an Annual Report. EPE commented that all three reports required by the proposed rule, which are to be filed initially by May 1, 2020, should go no further back than September 1, 2019.

##### *Five-Year Reports*

AEP Companies pointed out that utilities cannot report on a five-year period from September 1, 2019, to December 31, 2019, and commented that the first full five-year period since the passage of HB 4150 would not end until December 31, 2024. They suggested that the first five-year report be prospective only and stated that the five-year report should not address

§25.97(e)(1)(A) until May 1, 2025. TNMP commented that the first report should be due May 1, 2026, or that the May 1, 2020, report should be prospective only. TPPA sought clarification that the first five-year report is prospective only and does not include the preceding five-year period before the legislation became law. Similarly, TEC recommended that the initial five-year report to be filed on May 1, 2020, be prospective only. Both AEP Companies and TEC offered language to alter §25.97(e)(2) consistent with their comments.

#### *Annual Reports*

TEC and TPPA suggested that language was needed to clarify the timing of the initial report. Both commenters suggested that the initial annual report not be due until May 1, 2021, because an annual report filed May 1, 2020, would be limited, only covering the last third of 2019. TEC also stated that the later deadline would ensure that affected entities were able to put processes in place to track the desired information.

##### *Commission Response*

The commission declines to make changes in response to these comments. HB 4150 states that affected entities are, "...not required to submit the report until May 1, 2020." The commission finds that it has the discretion to set a deadline for those reports on or after May 1, 2020. Because of the importance of safety in electric utility operations, the commission concludes that the initial reports should be due May 1, 2020.

#### Comments on Specific Parts of the Rule

##### *Comments on §25.97(d)(1) (Employee Training Report)*

The proposed section requires affected entities to file reports summarizing hazard recognition and National Electrical Safety Code related training programs. EPE commented that additional clarification could be helpful to narrow the type of training programs about which the commission wishes to receive information. EPE suggested that such programs be limited only to those training programs related to vertical clearances.

##### *Commission Response*

The commission declines to limit the scope of the training programs that must be reported to the commission as recommended by EPE. PURA §38.102(a) requires summary descriptions of training about hazard recognition related to overhead transmission and distribution facilities and about National Electrical Safety Code requirements for construction of electric transmission and distribution lines. New §25.97(d) mirrors the statutory requirements.

##### *Comments on §25.97(e) (Five-Year Report)*

The proposed section requires affected entities to file a report every five years stating what percentage of the utility's overhead transmission system was inspected for vertical clearances in the preceding five years, and what percentage of the system is anticipated to be inspected in the next five years. TEC, TNMP, TPPA, AEP Companies, and EPE commented that requirements for the first five-year report should be modified to recognize that all the information required for the report may not be available by May 1, 2020, the proposed due date. TEC, TNMP, TPPA, and AEP Companies suggested that the first five-year report be made prospective only, meaning that affected entities would provide information about future inspection plans under §25.97(e)(1)(B), but not past inspection activities under §25.97(e)(1)(A). TEC stated that although utilities routinely inspect their systems, some utilities may not have been tracking

their inspection activities in a format that would allow them to report information on safety inspections that occurred before the passage of HB 4150.

#### *Commission Response*

The commission declines to make changes to the rule as proposed. While some utilities may find it challenging to provide the required information about past safety inspections under §25.97(e)(1)(A) for the first five-year report, the rule requires only that utilities report the percentage of overhead transmission facilities inspected for compliance. Affected utilities should make efforts to accurately report that information. In addition, the form for reporting this information provides space for a utility to explain the basis for the reported percentage, if it chooses to provide an explanation.

#### *Comments on §25.97(f) (Annual Report)*

The proposed section requires affected entities annually to file information regarding injuries, fatalities, non-compliance with PURA, and corrective actions associated with the utility's distribution and transmission system. TEC, TPPA, and EPE commented that, because the bill went into effect on September 1, 2019, the first annual report would not cover a full year of time. Rather, it would cover only the time period from September 1, 2019, to December 31, 2019. Additionally, TPPA commented that clarification was necessary regarding the types of vertical clearances covered in §25.97(f)(1), specifically whether the language meant vertical clearances only over waterways, and whether the language in §25.97(f)(2) applies only to noncompliance with regard to vertical clearances.

#### *Commission Response*

The commission acknowledges the effective date of HB 4150, but declines to make changes to the rule as proposed. Affected utilities should make an accurate initial annual report or provide a detailed explanation of the inability to do so and be prepared to provide additional explanation upon request by the commission. With regard to the clarification sought by TPPA, the commission responds that while PURA §38.004(b) addresses clearances over lakes, §38.004(a) is not limited to the type of surface being traversed and applies more generally. Further, concerning the language in §25.97(f)(2), due to the importance of safety and safety reporting, the commission concludes that the broader interpretation - all types of clearances provided for in the National Electrical Safety Code - is appropriate.

All comments, including any not specifically referenced herein, were fully considered by the commission.

#### *Statutory Authority*

It is therefore ordered by the Public Utility Commission of Texas that new 16 TAC §25.97, relating to Line Inspection and Safety, be hereby adopted with no changes to the text as proposed.

Cross Reference to Statutes: Public Utility Regulatory Act (PURA) §38.102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000670

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Effective date: March 5, 2020

Proposal publication date: November 29, 2019

For further information, please call: (512) 936-7244



## **TITLE 19. EDUCATION**

### **PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD**

#### **CHAPTER 1. AGENCY ADMINISTRATION**

##### **SUBCHAPTER BB. TEXAS APPLICATION**

##### **FOR STATE FINANCIAL AID ADVISORY**

##### **COMMITTEE**

#### **19 TAC §§1.9100 - 1.9106**

The Texas Higher Education Coordinating Board adopts new rules for Chapter 1, Subchapter BB, §§1.9100 - 1.9104, and 1.9106 of Board rules concerning the establishment of the Texas Application for State Financial Aid Advisory Committee, without changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6188). The rules will not be republished. Section 1.9105 is being adopted with changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6188). The rule will be republished.

The new section to Board rules establishes an advisory committee to assist in adopting procedures to allow a person to complete and submit the application for state financial aid by electronic submission through the website of the state common application form required by Texas Education Code, §51.762. To establish an advisory committee that primarily functions to advise the Board of the THECB, the Board must adopt rules in compliance with Chapter 2110 of the Texas Government Code regarding such committees, including rules governing an advisory committee's purpose, tasks, reporting requirements, and abolishment date.

No comments were received.

The new rules are adopted under Texas Education Code, §61.07762, which provides the Coordinating Board with the authority to establish the TASFA Advisory Committee.

#### *§1.9105. Tasks Assigned the Committee.*

Tasks assigned the committee may include:

- (1) making recommendations to the Board on the procedures, development, and any associated cost of the online TASFA;
- (2) identifying technical and functional revisions of the ApplyTX System regarding the development of the online TASFA;
- (3) soliciting input from stakeholders across the state; and
- (4) other activities necessary for the development of the online TASFA.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.



Filed with the Office of the Secretary of State on February 11, 2020.

TRD-202000576

William Franz

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Texas Higher Education Coordinating Board

Effective date: March 2, 2020

Proposal publication date: October 25, 2019

For further information, please call: (512) 427-6318



## CHAPTER 7. DEGREE GRANTING

### COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 19 TAC §§7.3 - 7.8, 7.11, 7.16

The Texas Higher Education Coordinating Board adopts new §7.16 and amendments to §§7.3 - 7.8 and 7.11, concerning Chapter 7, Subchapter A, General Provisions. Sections 7.5 and 7.11 are adopted without changes to the proposed text as published in the October 25, 2019, issue of the Texas Register (44 TexReg 6191) and will not be republished. Sections 7.3, 7.4, 7.6 - 7.8, and 7.16 are adopted with changes to the proposed text as published in the October 25, 2019, issue of the Texas Register (44 TexReg 6191). These sections will be republished below.

Specifically, the new Rule §7.16 moves Financial Protections for Student Tuition and Fees language from §7.7 Institutions Accredited by Board-Recognized Accreditors and §7.8 Institutions Not Accredited by a Board-Recognized Accreditor to create §7.16. Guidelines for potential claim(s), collection and disbursement of surety instruments is then added to create proposed Rule §7.16. The new revisions to Chapter 7, Subchapter A, Rules §§7.3 - 7.8 and 7.11. Specifically, a preponderance of the revisions move Financial Protections for Student Tuition and Fees from §7.7 Institutions Accredited by Board-Recognized Accreditors and §7.8 Institutions Not Accredited by a Board-Recognized Accreditor to create §7.16. The remaining revisions seek to clarify existing rules, including, clarifying the types of institutions which may participate in a reciprocal state exemption agreement under §7.3(33); clarifying to which institutions the Standards for Operation apply in §7.4 and adding the requirement in §7.4(8) that new degree program applications must evaluate the need for the proposed program of study; deleting a closed school previously allowed to have an AOS degree under §7.5(c); correcting cross-referenced subsections under §§7.6 - 7.8; and clarifying that individuals who become new owners are subject to the independent audited financial records requirement.

No comments were received.

The amendments and new section are adopted under the Texas Education Code Sections 61.303 and 61.3075, which provide the Coordinating Board with the authority of granting Certificate of Authorization and Certificate of Authority.

##### §7.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic Record--Any information that is:

(A) directly related to a student's educational efforts;

(B) intended to support the student's progress toward completing a degree program;

(C) regardless of the format or manner in which or the location where the information is held, maintained by an institution for the purpose of sharing among academic officials; and

(D) for purposes of this chapter, an academic record includes a student's educational history, but does not include medical records, alumni records other than educational history, human resources records, or criminal history record information or other law enforcement records.

(2) Accreditation--The status of public recognition that an accrediting agency grants to an educational institution.

(3) Accrediting Agency--A legal entity recognized by the Secretary of Education of the United States Department of Education as an accrediting agency that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions, including ensuring academic, financial, and operational quality. A Board-recognized Accrediting Agency is any accrediting agency authorized by the Secretary of Education of the United States Department of Education to accredit educational institutions that offer the associate degree or higher, the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from certain provisions of this chapter.

(4) Agent--A person employed by or representing a post-secondary educational institution that does not have a Certificate of Authorization or Certificate of Authority, within or without Texas who:

(A) solicits any Texas student for enrollment in the institution (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas);

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

(5) Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts (AA), the associate of science (AS), the associate of applied arts (AAA), the associate of applied science (AAS), and the associate of occupational studies (AOS) degrees.

(A) Academic Associate Degree Program--A grouping of courses designed to transfer to an upper-level baccalaureate program and that includes sixty (60) semester credit hours and not more than sixty-six (66) semester credit hours or ninety (90) quarter credit hours and not more than ninety-nine (99) quarter credit hours. An academic associate degree must include at least twenty (20) semester credit hours or thirty (30) quarter credit hours of general education courses. This specifically refers to the associate of arts (AA) and the associate of science degrees (AS).

(B) Applied Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least sixty (60) semester credit hours and not more than seventy-two (72) semester credit hours or ninety (90) quarter credit hours and not more than one hundred eight (108) quarter hours. An applied associate degree must include at least fifteen

(15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts (AAA) and the associate of applied science (AAS) degrees. Associate of Occupational Studies (AOS) degrees are only allowed under §7.5 of this chapter.

(6) Board--The Texas Higher Education Coordinating Board.

(7) Board Staff--The staff of the Texas Higher Education Coordinating Board including the Commissioner of Higher Education and all employees who report to the Commissioner.

(8) Career School or College--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the state of Texas or solicits business within the state of Texas, and that is not specifically exempted by Texas Education Code, §132.002 or §7.4 of this chapter (relating to Standards for Operations of Institutions), and:

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for career or personal improvement.

(9) Certificate of Approval--The Texas Workforce Commission's approval of career schools or colleges with operations in Texas to maintain, advertise, solicit for, or conduct any program of instruction in this state.

(10) Certificate of Authority--The Board's approval of postsecondary institutions (other than exempt institutions), with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees, while seeking Board-recognized accreditation. Additional conditions, restrictions, or requirements may be placed on a Certificate of Authority pursuant to §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor).

(11) Certificate of Authorization--The Board's acknowledgment that an institution is qualified for an exemption, unless specifically provided otherwise, from certain identified regulations in this subchapter.

(A) A Certificate of Authorization for an institution offering degrees or courses leading to degrees at a physical location in Texas will be issued for the period of time in the institution's current grant of accreditation by its Board-recognized accreditor.

(B) A Certificate of Authorization may be issued as provisional for a 15-month temporary exemption from certain identified regulations in this subchapter based on its main campus' accreditation while seeking final approval for the new Texas-based campus from its Board-recognized accreditor and the Texas Workforce Commission.

(C) An out-of-state institution may be issued a renewable one-year Certificate of Authorization in order to allow students to complete experiential learning experiences in Texas.

(12) Certificate of Registration--The Board's approval of an agent to solicit students on behalf of a private postsecondary educational institution in the state of Texas.

(13) Certification Advisory Council--The Council as established by Board rules Chapter 1, Subchapter H, §§1.135 - 1.141 of this title (relating to Certification Advisory Council).

(14) Change of Ownership or Control--Any change in ownership or control of a career school or college, or a postsecondary educational institution, or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college or postsecondary educational institution is considered to have changed:

(i) in the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;

(ii) in the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) A change of ownership or control does not include a transfer that occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(15) Cited--Any reference to an institution in a negative finding or action by an accrediting agency.

(16) Classification of Instructional Programs (CIP) Code--The four (4) or six (6)-digit code assigned to an approved degree program in accordance with the CIP manual published by the U.S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(17) Commissioner--The Commissioner of Higher Education.

(18) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate," "bachelor's," "master's," "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(19) Educational or Training Establishment--An enterprise offering a course of instruction, education, or training that is not represented as being applicable to a degree.

(20) Exempt Institution--A postsecondary educational institution that is fully accredited by and not operating under sanctions imposed by an agency recognized by the Board under §7.6 of this chapter (relating to Recognition of Accrediting Agencies), is defined as a "private or independent institution of higher education" under Texas Education Code, §61.003(15), a career school or college that applies for and is declared exempt under this chapter, an institution that has received approval by a state agency authorizing the institution's graduates to take a professional or vocational state licensing examination administered by that agency as described in Texas Education Code, §61.303(a), or an institution exempted by the Texas Workforce Com-

mission under Texas Education Code, §132.002. Exempt institutions must comply with certain Board rules.

(21) **Experiential Learning--Process** through which students develop knowledge, skills, and values from direct experiences outside an institution's classrooms. Experiential learning encompasses a variety of activities including, but not limited to, internships, externships, practicums, clinicals, field experience, or other professional work experiences. References to clinicals within this chapter encompasses all site-specific health professions experiential learning. Clinicals include site experiences for medical, nursing, allied health, and other health professions degree programs.

(22) **Fictitious Degree--A counterfeit or forged degree or a degree that has been revoked.**

(23) **Fraudulent or Substandard Degree--A degree conferred by a person who, at the time the degree was conferred, was:**

(A) operating in this state in violation of this subchapter;

(B) not eligible to receive a Certificate of Authority under this subchapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.12 of this chapter (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a Certificate of Authority under this subchapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.12 of this chapter, determines is not the equivalent of an accredited or authorized degree.

(24) **Out-of-State Public Postsecondary Institution--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the state of Texas. For purposes of this chapter, out-of-state public institutions of higher education are considered postsecondary educational institutions.**

(25) **Person--Any individual, firm, partnership, association, corporation, enterprise, postsecondary educational institution, other private entity, or any combination thereof.**

(26) **Personally Identifiable Information--Information of a potential, current or former student, including name, address, telephone number, social security number, email address, date of birth, education records, or any other identifying number or information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.**

(27) **Physical Presence--**

(A) While in Texas, a representative of the school or a person being paid by the school, who conducts an activity related to postsecondary education, including for the purposes of recruiting students (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas), teaching or proctoring courses including internships, clinicals, externships, practicums, and other similarly constructed educational activities (excluding those individuals that are involved in teaching courses in which there is no physical contact with Texas students or in which visiting students are enrolled), or grants certificates or degrees; and/or

(B) The institution has any location within the state of Texas which would include any address, physical site, telephone number, or facsimile number within or originating from within the boundaries of the state of Texas. Advertising to Texas students, whether through print, billboard, internet, radio, television, or other medium alone does not constitute a physical presence.

(28) **Postsecondary Educational Institution--An educational institution which:**

(A) is not a public community college, public technical college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code, §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(29) **Private Postsecondary Educational Institution--An institution which:**

(A) is not an institution of higher education as defined by Texas Education Code, §61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has an agent or representative presence in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.

(30) **Professional Degree--A degree that is awarded for a Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Veterinary Medicine (D.V.M.), Juris Doctor (J.D.), and Bachelor of Laws (LL.B.) and their equivalents and foreign cognates.**

(31) **Program or Program of Study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.**

(32) **Protected Term--The terms "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.**

(33) **Reciprocal State Exemption Agreement--An agreement entered into by the Board with an out-of-state state higher education agency or higher education system for the purpose of creating a reciprocal arrangement whereby that entity's institutions are exempted from the Board oversight for the purposes of distance education. In exchange, participating Texas public and private or independent institutions of higher education as defined in Texas Education Code, §61.003 and private postsecondary educational institutions as defined in Texas Education Code, §61.302(2) would be exempted from that state's oversight for the purposes of distance education.**

(34) **Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.**

(35) Required State or National Licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

(36) Sanction--An action taken by an accrediting agency indicating that an institution is out of compliance with its accrediting agency's standards or criteria and may lose such accreditation if the institution does not take action to comply within a certain period of time. Sanctions include, but are not limited to, warnings, notations, probation, or loss of accreditation and equate to a violation of this chapter.

(37) Single Point of Contact--An individual who is designated by an institution as the person responsible for receiving and conveying information between an institution and the Board or Board staff. The Board will direct all communications regarding an institution to the Single Point of Contact. Institutions must inform the Board of changes in the designated Single Point of Contact within 30 days of change.

(38) Substantive Change--Any change in principal location, ownership, or governance of an institution, change in accrediting agency or final action by an accrediting agency changing such institution's status with such accrediting agency, including negative actions taken by the accrediting agency against an institution, change in degree- or credential-level for an approved program, addition of new programs, degrees or credentials offered, change of institution name, or change in United States Department of Education requirements for receipt of federal financial aid based on financial or accreditation status.

(39) Visiting Student--A student pursuing a degree at an out-of-state institution (i.e., home institution) with no physical presence in Texas who has permission from the home institution and a Texas institution, which is either exempt from Board rules or currently in compliance with Board rules, to take specific courses at the Texas institution. The two institutions have an agreement that courses taken at the Texas institution will transfer back to the home institution.

#### *§7.4. Standards for Operation of Institutions.*

All non-exempt postsecondary educational institutions that operate within the state of Texas are required to meet the following standards. These standards will be enforced through the Certificate of Authority process for institutions without Board-recognized accreditation. Standards addressing the same principles will be enforced by Board-recognized accrediting agencies under the Certificate of Authorization process. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a Certificate of Authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited postsecondary institutions in Texas. Such practices and principles are generally set forth by institutional and specialized accrediting bodies and the academic and professional organizations.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. Postsecondary educational institutions shall demonstrate compliance with Texas Education Code, Chapter 132 by supplying either a copy of a Certificate of Approval to operate a career school or college or a Letter of Exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of governing board administrators, supervisors, counselors,

agents, representatives, and other institutional officers shall reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned advanced degree appropriate for the mission of the institution, preferably, an earned doctorate awarded by an institution accredited by a recognized accrediting agency, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a Certificate of Authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Governance. The institution shall have a system of governance that facilitates the accomplishment of the institution's mission and purposes, supports institutional effectiveness and integrity, and protects the interests of its constituents, including students, faculty and staff. If the institution has a governing board consisting of at least three (3) members, and that board focuses on the accomplishment of the institution's mission and purposes, supports institutional effectiveness and integrity, and protects the interests of its constituents, this standard will be considered as met. In the absence of such a governing board, the burden to establish appropriate safeguards within its system of governance and to demonstrate their effectiveness falls upon the institution.

(4) Distinction of Roles. The institution shall define the powers, duties and responsibilities of the governing body and the executive officers. There shall be a clear distinction in the roles and personnel of the chief business officer and the chief academic officer.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves, line of credit, or surety instrument so that, together with tuition and fees, it would be able to complete its educational obligations for the current term to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Program Evaluation.

(A) The institution shall establish adequate procedures for planning and evaluation, define in measurable terms its expected educational results, and describe how those results will be achieved.

(B) For all associate degree programs, the evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, qualifications of faculty and administrative personnel, and success of its students.

(C) For applied associate degree programs relating to occupations where state or national licensure is required, graduates must pass the licensing examination at a rate acceptable to the related licensing agency.

(D) Prior to establishing a new degree program, the institution shall evaluate the need for the proposed program of study through survey, research, or other means of measure. The capacity and ability of similar programs at public, private or independent institutions of higher education and private postsecondary educational institutions within Texas to meet market needs shall be considered.

(9) Administrative Resources. The institution has the administrative capacity to meet the daily needs of the administration, faculty and students, including facilities, laboratories, equipment, technology and learning resources that support the institution's mission and programs.

(10) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification. If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The academic skills of each entering student may be assessed with an instrument of the institution's choice. The institution may provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a Certificate of Authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Educational Credentials or its successor.

(11) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching in an academic associate, applied associate leading to required state or national licensure, or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member except, as provided by subparagraph (E) of this paragraph, teaching career and technical courses in an applied associate degree program, or career and technical courses that academic associate or baccalaureate students may choose to take, shall have at least an associate degree in the discipline being taught

from an institution accredited by a recognized agency and or at least three (3) years of full-time direct or closely related experience in the discipline being taught.

(C) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching general education courses in an applied associate degree program shall have at least a master's degree from an institution accredited by a recognized accrediting agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Except as provided by subparagraph (E) of this paragraph, graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified in subparagraphs (A) - (D) of this paragraph. Such appointments shall be limited and the justification for each such appointment shall be fully documented. The Board may review the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(12) Faculty Size. There shall be a sufficient number of faculty holding full-time teaching appointments that are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one (1) full-time faculty member in each program. At the graduate level, there shall be at least two (2) full-time faculty members in each program.

(13) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(14) Curriculum.

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed twenty-five (25) percent of all courses.

(B) Academic associate degrees must consist of at least sixty (60) semester credit hours and not more than sixty-six (66) semester credit hours or ninety (90) quarter credit hours and not more than ninety-nine (99) quarter credit hours. Applied associate degrees must consist of at least sixty (60) semester credit hours and not more than seventy-two (72) semester credit hours or ninety (90) quarter credit hours and not more than one hundred eight (108) quarter hours. A baccalaureate degree must consist of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter credit hours. A master's degree must consist of at least thirty (30) semester credit hours and not more than thirty-six (36) semester credit hours or forty-five (45) quarter credit hours and not more than fifty-four (54) quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(15) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least twenty (20) semester credit hours or thirty (30) quarter credit hours. Each applied associate degree program shall contain a general education component of at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least twenty-five (25) percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institution's general education requirements and the manner in which they will be met by the providing institution; and

(iii) the providing institution shall be accredited by a Board-recognized accrediting agency or hold a Certificate of Authority.

(16) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to

ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the Advanced Placement program (AP) or the College Level Examination Program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(17) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection of books, educational material and publications, on-line materials and other resources and with staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Applied associate degree programs shall provide adequate and appropriate resources for completion of course work.

(18) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(19) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student, designation of the major course of study; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in separate secure places. Records of students who are no longer enrolled at the institution for any reason, including graduation, must be maintained in accordance with §7.15 of this chapter (relating to Academic Records Maintenance, Protection, and Repository of Last Resort).

(C) Students in good standing will be provided transcripts upon request, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state and federally guaranteed student loans.

(20) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a printed or electronically published catalog. Institutions relying on electronic catalogs must ensure the availability of archived editions in order to serve the needs of alumni and returning students. The catalog must contain, at minimum, the following information:

- (i) the institution's mission;
- (ii) a statement of admissions policies;
- (iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;
- (iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;
- (v) cancellation and refund policies;
- (vi) a definition of the unit of credit as it applies at the institution;
- (vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;
- (viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;
- (ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;
- (x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;
- (xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;
- (xii) a complete listing of all scholarships offered, if any;
- (xiii) a statement describing the nature and extent of available student services;
- (xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;
- (xv) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and
- (xvi) any disclosures specified by the Board or defined in Board rules.

(C) The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs.

(E) Any special requirements or limitations of program offerings for the students at the Texas location must be made explicit in writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student in good standing shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to the institution's obligation, if any, to enforce with the rules and regulations governing state, and federally guaranteed student loans by temporarily withholding such credentials.

(21) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(22) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters; outline the established grievance process of the institution, which shall indicate that students should follow this process and may contact the Board using the student complaint procedures established by Board rules Chapter 1, Subchapter H, §§1.110 - 1.120 of this title (relating to Student Complaint Procedure) and/or the Texas Attorney General to file a complaint about the institution if all other avenues have been exhausted, and publish these policies in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(23) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

(24) Learning Outcomes.

(A) An institution must have an objective system of assessing learning outcomes in place for each part of the curriculum and the institution can demonstrate that appropriate learning outcomes are being achieved.

(B) An institution may deviate, for a compelling academic reason, from Standard (12) relating to Faculty Size and Standard (16) relating to Credit for Work Completed Outside a Collegiate Setting, as long as academic objectives are fully met.

#### *§7.6. Recognition of Accrediting Agencies.*

(a) Eligibility Criteria--The Board may recognize accrediting agencies with a commitment to academic quality and student achievement that demonstrate, through an application process, compliance with the following criteria:

(1) Eligibility. The accrediting agency's application for recognition must demonstrate that the entity:

(A) Is recognized by the Secretary of Education of the United States Department of Education as an accrediting agency authorized to accredit educational institutions that offer the associate degree

or higher. Demonstration of authorization shall include clear description of the scope of recognized accreditation.

(B) Is applying for the same scope of recognition as that for which it is recognized by the Secretary of Education of the United States Department of Education:

(i) Using the U.S. Department of Education classification of instructional programs (CIP) code at the two-digit level, the applicant shall identify all fields of study in which institutions it accredits may offer degree programs.

(ii) Accrediting agencies shall, for each field of study in which an accredited institution may offer degree programs, specify the levels of degrees that may be awarded. Levels must be differentiated at least to the following, as defined in §7.3 of this chapter (relating to Definitions): applied associate degree, academic associate degree, baccalaureate degree, master's degree, first professional degree and doctoral degree. Associate of occupational studies (AOS) degrees are only allowed under §7.5(c) of this chapter (relating to Administrative Injunctions, Limitations, and Penalties).

(iii) Only institutions that qualify as eligible for United States Department of Education Title IV programs as a result of accreditation by the applicant agency will be considered exempt under §7.7 of this chapter (relating to Institutions Accredited by Board-Recognized Accreditors).

(C) Accredits institutions that have legal authority to confer postsecondary degrees as its primary activity:

(i) Accrediting agencies must identify all institutions accredited by the agency that either the majority of the accredited institutions have the legal authority to award postsecondary degrees or that it accredits at least fifty (50) institutions that have the legal authority to award postsecondary degrees.

(ii) An accrediting agency that accredits programs as well as institutions shall demonstrate that either it accredits more institutions than programs or that it has policies, procedures and staff sufficient to address institutional standards of quality in addition to program standards of quality.

(iii) Accrediting agencies must have standards that require all accredited institutions to comply with all applicable laws in the state and local jurisdiction in which they operate and that require accredited institutions to clearly and accurately communicate their accreditation status to the public.

(D) Requires an on-site review by a visiting team as part of initial and continuing accreditation of educational institutions:

(i) Each accrediting agency shall demonstrate, through its documented practices and/or its official policies, that it requires no fewer than three (3) members on a team when conducting initial and continuing accreditation visits, that none have a monetary or personal interest in the findings of the on-site review, that all have professional experience and knowledge that qualifies them to review the institution's compliance with the standards of the agency, and that the combined team experience and knowledge are sufficient to review all applicable standards of the agency.

(ii) Accrediting agencies may conduct site visits for reasons other than initial and continuing accreditation with fewer team members.

(iii) Accrediting agencies shall provide a list of the visiting team members for the five (5) most recently completed on-site reviews. The list shall show name, employer, title of positions held

with that employer and the standards for which the individual was responsible in that on-site review.

(E) Has policies or procedures that ensure the entity will promptly respond to requests for information from the Board:

(i) Each accrediting agency shall provide the Board its official policy regarding disclosure of information about institutions that are or have been candidates for accreditation and are or have been accredited. Agencies shall provide to the Board, within ten (10) working days, any new information and any requested information about a Texas institution that would be available to the public under that official policy.

(ii) Each accrediting agency shall include in its standards for accreditation of Texas institutions that the institutions disclose publicly and to the Board the number of degrees awarded at each level each year and the number of students enrolled in the fall of each year.

(F) Has sufficient resources to carry out its functions:

(i) Accrediting agencies shall identify the number of on-site reviews conducted during the most recent twelve (12) month period, the number of staff members who participated in those on-site reviews and the maximum number of on-site reviews conducted by any individual staff member. If that maximum number exceeds thirty (30), the agency shall explain how it expects to carry out its function of enforcing its standards on Texas institutions.

(ii) Each accrediting agency shall provide evidence that its ratio of current assets to current liabilities equals or exceeds 1.2.

(iii) Each accrediting agency shall demonstrate that its fees are reasonable for the accreditation services provided.

(2) Recognition--To receive and maintain recognition from the Board, the accrediting agency must, in addition to the items listed in paragraph (1) of this subsection:

(A) Provide the Board with current standards used by the entity in initial and ongoing accreditation reviews of educational institutions and invite the Board to participate in such reviews:

(i) Accrediting agencies must have publicly disclosed standards that address at a minimum the following issues: student achievement in relation to the institution's mission; curricula; faculty; facilities, equipment and supplies; fiscal and administrative capacity; student support services; recruiting and admissions practices; academic calendars; catalogs; grading; measures of program length; objectives of the degrees or credentials offered; record of student complaints received by or available to the agency; management and financial control.

(ii) In the application process, the accrediting agency must indicate how its standards address each of the quality assessment categories outlined in clause (i) of this subparagraph which represent the underlying principles described in the institutional standards of §7.4 of this chapter (relating to Standards for Operations of Institutions). Comparison of its standards with the standards in §7.4 of this chapter is required as a means of indicating how its standards meet those principles.

(iii) Each accrediting agency shall provide its policy for periodic reviews of institutions under its accreditation. At a minimum, the accrediting agency must conduct on-site reviews at least every ten (10) years.

(iv) At least ten (10) working days before each scheduled periodic on-site review of a Texas institution, accrediting agencies shall invite the Board staff to participate in the review. Such



participation shall be at no expense to the institution or the accrediting agency.

(v) Within ten (10) working days of an official change in standards, the agency shall notify the Board of those changes.

(vi) By providing a copy of its publicly disclosed policies and procedures, each accrediting agency shall demonstrate that its initial and ongoing reviews and the resultant accreditation decisions are fair and consistent with the available evidence.

(vii) Accrediting agencies that use an advisory body, similar to the Certification Advisory Council described in §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor), shall describe the advisory body's composition and authority. Accrediting agencies that do not use such a body shall describe the process used to ensure that the evidence obtained from reviews results in appropriate accreditation decisions.

(viii) The initial and ongoing reviews shall include an institutional self-evaluation process or a documented alternative process to promote continuous quality improvement.

(ix) Each accrediting agency shall have and publicly disclose its processes for appealing accreditation decisions.

(B) Provide the Board with written evidence of continuing recognition by the Secretary of Education of the United States Department of Education. Loss of recognition from the Secretary automatically results in loss of Board recognition at the same time. Written evidence may consist of a letter from the chief executive officer of the accrediting agency. Accrediting agencies shall submit the evidence upon notice of continued recognition or upon a change in recognition status, scope or level;

(C) Provide a list of Texas educational institutions accredited by it; notify the Board in writing of any change to its list of Texas accredited institutions within ten (10) days of the change;

(D) Notify the Board of any investigated complaints concerning a Texas institution where the accrediting agency took official action on issues of non-compliance and the disposition of those complaints;

(E) Seek Board approval for any expansion of its recognized scope of accreditation authority; and

(F) Demonstrate that the ownership and control of the accrediting agency is sufficiently independent to ensure that the accreditation process is conducted in the public interest.

(G) Each time the accrediting agency applies for continued recognition by the Secretary of Education of the United States Department of Education, the accrediting agency must apply for continued recognition by the Coordinating Board. Applications forms will be provided by Board staff. Application for continued recognition must, at a minimum, contain all information required for initial eligibility and recognition by the Coordinating Board under this rule.

(b) Other Information, Denial or Withdrawal of Recognition and Appeals.

(1) Once recognized, an accrediting agency retains that recognition unless and until the Board withdraws the recognition. Failure to comply with any of the requirements in this chapter, including failure to comply with information requests during periodic reviews, will be grounds for the Board to consider withdrawing recognition.

(2) Each accrediting agency shall provide its policy for periodic reviews. Periodic review shall be conducted at the time an ac-

crediting agency applies for continued recognition by the Secretary of the United States Department of Education. The Coordinating Board reserves the right to request and review current policies at other times for good cause, including, but not limited to, student complaints, accredited institution complaints, or concerns raised by the United States Department of Education or other state or federal agencies.

(3) The Board may use information provided by parties other than the accrediting agency to assess the accrediting agency's commitment to academic quality and student achievement. The Board will consider any such information in an open, public meeting during which the accrediting agency may challenge the information.

(4) The Board will make any decision to deny recognition of an accrediting agency or to withdraw recognition from an accrediting agency in a public meeting.

(5) An institution operating in Texas as an exempt institution pursuant to §7.7 of this chapter when its recognized accrediting agency loses or voluntarily relinquishes its recognition will have a provisional time period set by the Board, or Board staff as delegated, within which the institution may continue to operate pursuant to the requirements in §7.7(2) and (3) of this chapter.

(6) An accrediting agency or institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

#### *§7.7. Institutions Accredited by Board-Recognized Accreditors.*

An institution which does not meet the definition of an institution of higher education contained in Texas Education Code §61.003, is accredited by a Board-recognized accreditor, and is interested in offering degrees or courses leading to degrees in the State of Texas must follow the requirements in paragraphs (1) - (4) of this section.

(1) Authorization to Offer Degrees or Courses Leading to Degrees in Texas.

(A) Each institution and/or campus location must submit an application for a Certificate of Authorization to offer degree(s) or courses leading to degrees in Texas. The application form for the Certificate of Authorization may be found on the Board's website. The application must contain the following information:

(i) Name of the institution;

(ii) Physical location of campus, or in the case of only providing clinicals or internships in Texas, the physical location of all clinical or internship sites, number of students in clinicals or internships and start and end date of clinicals or internships;

(iii) Name and contact information of the Chief Administrative Officer of the campus and name and contact information of the designated Single Point of Contact as defined in §7.3 of this chapter (relating to Definitions). In the case of an application based on clinicals or internships, name and contact information of clinical or internship site supervisors;

(iv) Name of Board-recognized accreditor;

(v) Level of degree, degree program name, and CIP code as authorized by the Board-recognized accreditor;

(vi) Documentation of notification to students and potential students of any program which does not make the graduate eligible to take required professional examinations in that field or to practice regulated professions in that field in Texas;

(vii) Dates of accreditation granted by the Board-recognized accreditor.

(I) If the institution or a location in Texas is currently subject to a negative or adverse action by its Board-recognized accreditor which has not resulted in a sanction, the institution must provide documentation explaining the reasons for the action and actions taken to reverse the negative or adverse action.

(II) If the institution or a location in Texas is currently subject to a sanction by its Board-recognized accreditor, the institution must provide documentation explaining the reasons for the action and actions taken to comply with the accrediting agency's standards or criteria, including a timeline for returning to compliance, in order to maintain accreditation.

(III) If the institution applies based on accreditation of its main campus while seeking final approval for the new Texas-based campus from its Board-recognized accreditor and the Texas Workforce Commission, the institution must provide documentation from its accreditor acknowledging that a decision on campus accreditation can be made within fifteen (15) months of the issuance of a provisional Certificate of Authorization.

(viii) Acknowledgement of student complaint procedure, compliance with the institutional accrediting agency's standards for operation of institutions, annual review reporting requirements, substantive change notification, and student data reporting requirements contained in this section, §§1.110 - 1.120 of this title (relating to Student Complaint Procedure), §7.4 of this chapter (relating to Standards for Operation of Institutions), §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes), and §7.13 of this chapter (relating to Student Data Reporting), respectively;

(ix) Texas Workforce Commission Certificate of Approval or a Texas Workforce Commission exemption or exclusion from Texas Education Code, Chapter 132;

(x) Disclosure of most recent United States Department of Education financial responsibility composite score, including applicable academic year for score. If the institution has a score under 1.5, the institution must provide documentation of all actions taken since date of calculation to raise the score.

(xi) Documentation of reserves, lines of credit, or surety instruments that, when combined with tuition and fee receipts, are sufficient to allow the institution to fulfill its educational obligations for the current term to its enrolled students if the institution is unable to continue to provide instruction to its enrolled students for any reason. Such documentation must meet requirements as defined in §7.16 of this subchapter (relating to Financial Protections for Student Tuition and Fees).

(B) Board staff will verify information and accreditation status. Upon determination that an institution is in good standing with its Board recognized accreditor, has sufficient financial resources, and, if applicable, has provided sufficient documentation of correcting accreditation or financial issues, Board staff will provide a Certificate of Authorization to offer in Texas those degrees or courses leading to degrees for which it is accredited. If an institution is only providing clinicals or internships in the state of Texas, a Certificate of Authorization will be issued for the institution to offer in the state of Texas identified clinicals or internships in connection with those degrees or courses leading to degrees for which the institution is accredited. The Certificate of Authorization will be issued to the institution by name, city and state.

(C) Certificates of Authorization are subject to annual review for continued compliance with the Board-recognized accreditor's standards of operation, student complaint processes, financial via-

bility, and accurate and fair representation in publications, advertising, and promotion.

(i) Institutions must submit the following documentation on an annual basis for Board staff review and recommendation to the Board for continuation or revocation of the Certificate of Authorization:

(I) Annual audited financial statements, issued less than one year from time of submission, prepared in accordance with Generally Accepted Accounting Principles by an independent certified public accountant;

(II) Documentation of reserves, lines of credit, or surety instruments that, when combined with tuition and fee receipts, are sufficient to allow the institution to fulfill its educational obligations for the current term to its enrolled students if the institution is unable to continue to provide instruction to its enrolled students for any reason. Institutions under a Certificate of Authorization as of September 1, 2017 are required to provide documentation of reserves, lines of credit, or surety instruments going forward with the 2019 annual compliance review.

(III) Certification that the institution is providing accurate and fair representation in publications, advertising, and promotion, including disclosure to students and potential students of any program which does not make the graduate eligible to take required professional examinations in that field or to practice regulated professions in that field in Texas. The institution shall further certify that it is maintaining any advertising used in Texas for a minimum of five years and shall make any such advertisements available to the Board for inspection upon request.

(IV) An annotated copy of the student catalog or student handbook showing compliance with the principles addressed in §7.4 of this chapter with cross-reference to the operational standards of its institutional accrediting agency;

(V) A copy of the institution's student complaint policy, links to online student complaint procedures and forms, and summary of all complaints made by Texas residents or students enrolled at a Texas-based institution concerning the institution in accordance with §§1.110 - 1.120 of this title. The complaint summary shall include complaints which have been filed, with the institution, its accrediting agency, or the Board within the 12 months prior to the annual review reporting date and shall indicate whether pending or resolved;

(VI) Official statement of current accreditation status and any pending or final actions that change the institution's accreditation status from the institution's Board-recognized accreditor, including changes in degree levels or programs offered approvals, changes in ownership or management, changes in name, and changes in physical location within the 12 months prior to the annual review reporting date;

(VII) Information regarding heightened cash monitoring or other changes that affect students' federal financial aid eligibility through the US Department of Education;

(VIII) Attestation that all documentation submitted is true and correct and continued acknowledgement of student complaint procedure, annual review reporting requirements, substantive change notification, and student data reporting requirements contained herein in this section, §§1.110 - 1.120 of this title, §§7.4, 7.11, 7.13, and 7.15 of this chapter, respectively.

(ii) Annual reviews are conducted based on an institution's name and initial date of authorization.

(I) Institutions with names starting with "A" through "O" must submit annual review documentation by January 15 of each year. The Board will review staff recommendations at the annual July Board meeting.

(II) Institutions with names starting with "P" through "Z" must submit annual review documentation by July 15 of each year. The Board will review staff recommendations at the annual January Board meeting.

(III) Institutions that have received their first Certificate of Authorization less than six months from the due date for submission of annual review documentation may wait to submit documentation until the following annual review submission date.

(iii) Prior to making a recommendation to the Board, staff has discretion to conduct a site visit at the institution if warranted by facts disclosed in the annual review documentation. The Board-recognized accreditor will be notified and invited to participate.

(D) Certificates of Authorization for institutions offering degrees or courses leading to degrees at a physical location in Texas, upon Board staff recommendation after annual review, expire at the end of the grant of accreditation by the Board-recognized accreditor.

(i) If a new grant of accreditation is awarded by the Board-recognized accreditor, the Certificate of Authorization may be renewed upon submission of documentation of the new grant of accreditation.

(ii) If an institution changes recognized accreditors, the institution must submit a new application for a Certificate of Authorization.

(E) Certificates of Authorizations based solely on providing clinicals or internships in Texas expire one year from date of issuance.

(i) If clinicals or internships are ongoing in Texas, the Certificate of Authorization based solely on providing clinicals or internships in Texas must be renewed on an annual basis. At least thirty (30) days, but no more than ninety (90) days, prior to the expiration of the current Certification of Authorization, an institution, if it desires renewal, is required to provide updated information regarding the physical location of all clinical or internship sites, number of students in clinicals or internships, and the start and end date of the clinicals or internships.

(ii) The Board shall renew the Certificate of Authorization based solely on providing clinicals or internships in Texas if it finds that the institution has maintained all requisite standards.

(F) Certificates of Authorization for Texas-based campuses which are provisionally-granted based on their main campus' accreditation expire at the end of fifteen (15) months.

(i) If accreditation has not been achieved by the expiration date, the provisionally-granted Certificate of Authorization will be withdrawn, the institution's authorization to offer degrees will be terminated, and the institution will be required to comply with the provisions of §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor).

(ii) Subsequent provisionally-granted Certificates of Authorization will not be issued.

(iii) At least ninety (90) days prior to expiration of the certificate, institutions operating under a provisionally-granted Certificate of Authorization must submit either an application for a Certificate of Authorization under this section or an application for a Certificate of Authority under §7.8 of this chapter.

(G) Institutions under an existing Certificate of Authorization must immediately notify the Board if the institution or its main campus becomes subject to a sanction by its Board-recognized accreditor. The institution must provide documentation explaining its current status and actions taken to comply with the accrediting agency's standards or criteria, including a timeline for returning to compliance, in order to maintain accreditation.

(2) Restrictions Placed on Institution under Sanctions by Its Accreditor.

(A) If an institution is under sanctions by its accreditor, limitations appropriate for the sanction shall be placed upon the institution's Certificate of Authorization. Limitations may include, but are not limited to:

(i) Restrictions on adding degree programs to its authorization;

(ii) An increase in the amount of financial reserves, lines of credit or surety instrument required to maintain a Certificate of Authorization; and

(iii) Review every six months, including unannounced site visits.

(B) The Board will notify the institution via letter of all restrictions placed upon its Certificate of Authorization due to its accreditors' sanctions.

(C) The Board will place a notice of all sanctions placed upon an institution via the Board's website.

(D) Restrictions and public notification will be removed upon written documentation from the institution's accreditor that all sanctions have ended.

(3) Grounds for Revocation of any Certificate of Authorization.

(A) Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission.

(B) Institution loses accreditation from Board-recognized accreditor.

(C) Institution's Accreditor is removed from the U.S. Department of Education or the Board's list of approved accreditors.

(i) If the institution's Certificate of Authorization is revoked due to its accrediting agency's removal from the U.S. Department of Education and/or the Board's list of approved accreditors, the Board, or Board staff as delegated, shall set a provisional time period within which institutions may continue to operate, not to exceed any provisional time period set by the United States Department of Education.

(ii) If the institution's Certificate of Authorization is revoked due to its accrediting agency's removal from the U.S. Department of Education or the Board's list of approved accreditors, a request to extend its Certificate of Authorization for the provisional time period set under paragraph (3)(C)(i) of this section, must be submitted to the Commissioner within ten (10) days of publication, by either the U.S. Department of Education or the Board, of such revocation.

(D) Institution fails to comply with data reporting, substantive change notification requirements, or annual review reporting requirements.

(E) Board staff recommends revocation based on deficiencies in compliance with the principles addressed in §7.4 of this chapter as evidenced by lack of compliance with the Board-recognized

accreditor's standards, which are found in annual review documentation and not corrected by the institution upon request by Board staff.

(F) Institution offers degrees for which it does not have accreditor approval.

(4) Process for Removal of Authorization.

(A) Commissioner notifies institution of grounds for revocation as outlined in paragraph (3) of this section unless paragraph (3)(C) of this section applies and the Board sets a provisional time period for compliance.

(B) Upon receipt of the notice of revocation, the institution shall not enroll new students and may only grant or award degrees or offer courses leading to degrees in Texas to students enrolled on the date of notice of revocation until it has either been granted a Certificate of Authority to grant degrees, or has received a determination that it did not lose its qualification for a Certificate of Authorization.

(C) Within ten (10) days of its receipt of the Commissioner's notice, the institution must provide, as directed by Board staff, one or more of the following:

(i) proof of its continued qualification for the exemption; or

(ii) submit data as required by §7.13 of this chapter; or

(iii) a plan to correct any non-compliance or deficiencies which lead to revocation; or

(iv) a plan to seek new Board-recognized accreditation; or

(v) written intention to apply for a Certificate of Authority within 60 days of the notice of revocation; or

(vi) a written teach-out plan, which must be approved by Board staff before implementation.

(D) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(E) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(F) If a determination allows the institution to continue operating, a new Certificate of Authorization will be provisionally-granted. Provisions for continued operation under the new Certificate of Authorization may include, but are not limited to:

(i) requirements to provide updates to Board staff on a monthly basis;

(ii) continued progress toward full compliance with all Board rules and requirements;

(iii) continued progress toward new Board-recognized accreditation, if applicable, or toward approval for a Certificate of Authority; and

(iv) other requirements imposed by the Board.

(G) Certificates of Authorization which are provisionally-granted after a notice of revocation continue only as long as the institution complies with all such provisions.

(5) Closure of an Institution.

(A) The governing board, owner, or chief executive officer of an institution that plans to cease operation shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(B) If an institution closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(C) If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003. The agreement shall be in writing, shall be subject to Board approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) The Certificate of Authorization for an institution is automatically withdrawn when the institution closes. The Commissioner may grant to an institution that has a degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(E) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(F) No new students shall be allowed to enter the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board.

(G) The institution shall transfer all academic records pursuant to §7.15 of this chapter (relating to Academic Records Maintenance, Protection, and Repository of Last Resort).

*§7.8. Institutions Not Accredited by a Board-Recognized Accreditor.* An institution which is not accredited by a Board-recognized accreditor and which does not meet the definition of institution of higher education contained in Texas Education Code, §61.003, must follow the Certificate of Authority process in paragraphs (1) - (9) of this section in order to offer degrees or courses leading to degrees in the state of Texas. Institutions are encouraged to contact the Board staff before filing a formal application.

(1) Certificate of Authority Eligibility.

(A) The Board will accept applications for a Certificate of Authority only from those applicants:

(i) proposing to offer a degree or credit courses leading to a degree; and

(ii) which meet one of the following conditions:

(I) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as either a non-degree-granting institution or an exempt institution only offering degrees in religious disciplines for a minimum of two (2) years;

(II) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a degree-granting institution and seeks to open a new campus;

(III) has been legally operating as a degree-granting institution in another state for a minimum of four (4)

years and can verify compliance with all applicable laws and rules in that state; or

(IV) does not meet one of the three previous operational history conditions, but meets additional application and review requirements for its initial application, and agrees to meet additional conditions, restrictions, or reporting requirements during its first two years of operation under a Certificate of Authority. The Certificate of Authority will be issued with written, specific conditions, restrictions, or reporting requirements placed upon the institution.

(V) The Board may not issue a Certificate of Authority for a private postsecondary institution to grant a professional degree, as defined in §7.3 of this title (relating to Definitions) or to represent that credits earned in this state are applicable toward a degree if the institution is chartered in a foreign country or has its principal office or primary educational program in a foreign country.

(B) To be considered by the Board as operating, means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a Certificate of Authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety instrument meeting requirements as defined in §7.16 of this subchapter (relating to Financial Protections for Student Tuition and Fees), including but not limited to, a surety bond, an assignment of a savings or escrow account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of postsecondary institutions.

## (2) Certificate of Authority Application Submission and Requirements.

(A) An applicant must submit an application to the Board to be considered for a Certificate of Authority to offer identified proposed degree(s), and courses which may be applicable toward a degree, in Texas.

(i) Applications must be submitted as an original and a copy in an electronic format as specified by Board staff, and accompanied by the application fee described in paragraph (3) of this section.

(ii) A single desk review of the application will be conducted to determine completeness and readiness for a site team visit.

(iii) The desk review will be done by a reviewer who will act as the site review team leader if the application is deemed complete and ready for a site team visit.

(iv) The desk reviewer, in consultation with Board staff, will make three possible recommendations. Board staff will make a final determination on acceptability of the application based on one of the three recommendations:

(I) The application is determined to be foundationally incomplete in one or more Standards for Operation of Institutions as described in §7.4 of this chapter and not ready for submission. A foundationally incomplete application is one where the Standards for Operation of Institutions have not been met to such a degree that the institution is unlikely to be sustainable or operational.

(II) The application may be resubmitted after incorporating revisions or additions suggested by the reviewer. The revisions or additions must allow the application to meet all Standards for Operation of Institutions.

(III) The application is acceptable and ready for a site review visit.

(v) If the application is foundationally incomplete and not ready for submission, a portion of the application fee, if not expended during the desk review, may be returned and another application may not be submitted for one year from the date of rejection of the foundationally incomplete application.

(B) The application form for the Certificate of Authority may be found on the Board's website.

(C) The Certificate of Authority application must include:

(i) The name and address of the institution;

(ii) The purpose and mission of the institution;

(iii) Documentary evidence of compliance with paragraph (1)(A)(i)-(ii) of this section;

(iv) Documentary evidence of either a Letter of Exemption or Certificate of Approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132;

(v) Documentary evidence of articles of incorporation or other Texas-authorized organizational documents, regulations, rules, constitutions and bylaws, or other regulations established for the governance and operation of the institution;

(vi) Identification, by name and contact information, of:

(I) The sponsors or owners of the institution;

(II) The designated Single Point of Contact as defined in §7.3 of this chapter (relating to Definitions);

(III) The chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(IV) Identification of faculty who will, in fact, teach in each program of study, including identification of colleges attended and copies of transcripts for every degree held by each faculty member;

(vii) Information regarding each degree or course leading to a degree which the applicant proposes to offer, including a full description of the proposed degree or degrees to be awarded and the course or courses of study prerequisite thereto;

(viii) A description of the facilities and equipment utilized by the applicant, including, if applicable, all equipment, software, platforms and other resources used in the provision of education via online or other distance education;

(ix) Detailed information describing the manner in which the applicant complies with each of the Standards of Operations of Institutions contained in §7.4 of this chapter (relating to Standards for Operations of Institutions);

(x) If applicable, institutions accredited by entities which are not recognized by the Board must submit all accrediting agency reports and any findings and institutional responses to such reports and findings for ten years immediately preceding the application for a Certificate of Authority. Accreditation by entities which are not recognized by the Board does not allow an institution to offer a degree or courses leading to a degree without a Certificate of Authority to offer such degree or courses;

(xi) A written accreditation plan, identifying:

(I) The Board-recognized accrediting agency with which the applicant intends to apply for institutional accreditation;

(II) The planned timeline for application with and approval by the Board-recognized accrediting agency;

(III) Any contacts already made with the Board-recognized accrediting agency, including supporting documents.

(xii) Any additional information which the board may request.

(D) An applicant that does not meet the previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section must be able to demonstrate it is able to meet all Standards for Operation of Institutions found in §7.4 of this chapter through documentation and/or possession of adequate resources. Such demonstration includes, but is not limited to:

(i) Executed agreements with all administration and faculty identified in the application;

(ii) Complete curriculum, assessment, and learning tools for each proposed degree;

(iii) Possession of all listed facilities and resources.

(E) An applicant that does not meet the previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section may not apply for a graduate degree or for more than one area of study as part of its initial application for a Certificate of Authority.

#### (3) Fees Related to Certificates of Authority.

(A) Each biennium the Board shall set the fees for applications for Certificates of Authority, which shall not exceed the average cost, in the preceding two fiscal years, of staff time, review and consultation with applicants, and evaluation of the applications by necessary consultants, including the cost of such consultants.

(B) Each biennium, the Board shall also set the fees for amendments to add additional degree programs to Certificates of Authority.

(C) The Commissioner shall request changes in the fees at a Board quarterly meeting.

#### (4) Authorization Process.

(A) Based upon the information contained in the application, the Commissioner or his/her designee shall determine whether a site review team is necessary. A site review team is always required for applications for an initial Certificate of Authority.

(B) A site review team shall be composed of no fewer than three (3) members, all of whom have experience and knowledge in postsecondary education. The combined team experience and knowledge shall be sufficient to review all applicable standards of the agency.

(C) An institution must demonstrate it is prepared to be fully operational as of the date of the on-site evaluation; i.e., it must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions.

(D) The conditions found at the institution as of the date of the on-site evaluation review team's visit will provide the basis for the team's evaluation and report, the Certification Advisory Council's recommendation, the Commissioner's recommendation, and the Board's determination of the institution's qualifications for a Certificate of Authority.

(E) The site review team shall conduct an on-site review of the institution and prepare a report regarding the institution's ability to meet the Standards of Operation.

(F) The applicant shall have thirty (30) days in which to respond in writing to the report.

(G) The Certification Advisory Council shall review the site review team's report and the applicant's response and make a recommendation regarding disposition to the Board and Commissioner.

(i) If the applicant has no previous operational history as described by paragraph (1)(A)(ii)(I)-(III) of this section, the Council shall make recommendations for additional conditions, restrictions, or reporting requirements during the first two years of operation under a Certificate of Authority.

(ii) If the applicant has previous operational history as described by paragraph (1)(A)(ii)(I)-(III) of this section, the Council may make recommendations for additional conditions, restrictions, or reporting requirements during the first two years of operation under a Certificate of Authority.

(H) The Commissioner shall make his/her recommendation regarding the application to the Board. The Commissioner's recommendation shall be made independent of the Certification Advisory Council's recommendation. The Commissioner may make recommendations for additional conditions, restrictions, or reporting requirements for the time the institution is operating under a Certificate of Authority.

(I) After review of the Commissioner's and Council's recommendations, if the Board approves the application, the Commissioner shall immediately have prepared a Certificate of Authority containing the issue date, a list of the approved degree(s) or courses leading to degrees, and the period for which the Certificate is valid. If applicable, the Certificate of Authority will be issued with any written, specific conditions, restrictions, or reporting requirements placed upon the institution and approved by the Board.

(J) After review of the Commissioner's and Council's recommendations, if the Board does not approve the application, the Commissioner shall immediately notify the applicant of the denial and the reasons for the denial.

(K) Upon denial, an applicant that has met the previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section may not reapply for a period of one hundred eighty (180) days from date of denial.

(L) Upon denial, an applicant that has not met the previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section may not reapply for a period of one year from date of denial.

#### (5) Terms and Limitations of a Certificate of Authority.

(A) The Certificate of Authority to grant degrees is valid for a period of two (2) years from the date of issuance.

(B) Certification by the state of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in subparagraph (A) of this paragraph. Therefore, the institution awarded a Certificate of Authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the state of Texas or agency thereof. Specific

language prescribed by the Commissioner which explains the significance of the Certificate of Authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(C) Institutions holding a Certificate of Authority will be required to:

- (i) furnish a list of their agents to the Board;
- (ii) maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board; and
- (iii) report any substantive change, including changes in administrative personnel, faculty, or facilities.

(D) Institutions that, upon application, did not meet one of the three previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section, in addition to the requirements of subparagraph (C) of this paragraph, are required to provide, at the end of the first year of the initial Certificate of Authority:

(i) Documentary evidence of continued exemption or approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132;

(ii) Current audited financial statements, including a balance sheet, income statement, statement of changes in net worth, and statement of cash flow, updated since issuance of the initial Certificate of Authority;

(iii) Documentation of continued validity of any required financial surety instrument;

(iv) Current enrollment, retention, and graduation numbers for students in all approved degree programs; and

(v) An updated accreditation plan, including any progress made toward obtaining Board-recognized accreditation identified in the initial application or a change in plans to apply for accreditation with another Board-recognized accreditation agency.

(E) Authority to Represent Transferability of Course Credit. Any institution as defined in §7.3 of this chapter, whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(i) the other institution is named in such representation, and is accredited by a Board-recognized accrediting agency or has a Certificate of Authority;

(ii) the courses are identified and documented for which credit is claimed to be applicable to the degree programs at the other institution; and

(iii) the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' governing boards in writing, and is filed with the Board.

(6) Amendments to a Certificate of Authority.

(A) An institution seeking to amend its Certificate of Authority to award a new or different degree during the period of time covered by its current Certificate of Authority may file an application for amendment, on forms provided by the Board upon request, subject to the following exceptions:

(i) An institution with no previous operational history described by paragraph (1)(A)(ii)(I)-(III) of this section which has been granted a Certificate of Authority may not apply for an amend-

ment during the period of time covered by its initial Certificate of Authority.

(ii) An institution with operational history described by paragraph (1)(A)(ii)(I)-(III) of this section which has been granted a Certificate of Authority may not apply for an amendment within the first one hundred eighty (180) days after the grant of its initial Certificate of Authority.

(iii) An institution with operational history described by paragraph (1)(A)(ii)(I)-(III) of this section which has been granted a Certificate of Authority with restrictions may not apply for an amendment during the period of time covered by the restricted Certificate of Authority.

(iv) An institution seeking to discontinue a degree program, without closure of the institution, shall assure the continuity of students' education by entering into a teach-out agreement with:

(I) another institution authorized by the Board to hold a Certificate of Authority;

(II) an institution operating under a Certificate of Authorization; or

(III) a public or private institution of higher education as defined in Texas Education Code §61.003.

(v) The teach-out agreement shall be in writing, shall be subject to Board staff approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(B) Applications for amendments shall be accompanied by the fee described in paragraph (3) of this subsection for each amendment to an existing degree or for each application to award a new or different degree.

(C) Based upon the information contained in the application for amendment, the Commissioner or his/her designee may utilize an outside consultant, the Certification Advisory Council, or both, to review the application for amendment in order to make a recommendation to the Board.

(D) Upon Board approval that the new or revised degree program meets the required standards, the Board shall amend the institution's Certificate of Authority accordingly.

(E) A change of degree level or additional program would require an amended Certificate of Authority prior to beginning the program.

(7) Renewal of Certificate of Authority.

(A) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current Certificate of Authority, an institution seeking renewal shall make application to the Board on forms provided upon request. The renewal application must include any applications for or renewal of accreditation by national or regional accrediting agencies. The renewal application shall be accompanied by the fee described in paragraph (3) of this subsection.

(B) The application for renewal of the Certificate of Authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the renewal application must include the institution's record of improvement and progress toward accreditation. Evaluation of the renewal application will include review of compliance with any specific conditions, restrictions, or reporting requirements placed upon the institution during the period of the pre-

vious Certificate of Authority and whether continuation or addition of conditions, restrictions or reporting requirements is warranted.

(C) An institution may be granted consecutive Certificates of Authority for a total grant of no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a recognized accrediting agency.

(D) Subject to the application and authorization restrictions of this section, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards and is making sufficient progress toward accreditation by a Board-recognized accrediting agency.

(8) Revocation of Certificate of Authority.

(A) Grounds for revocation include:

(i) Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission; or

(ii) Institution fails to comply with substantive change notification and data reporting requirements as outlined in §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes) and §7.13 of this chapter (relating to Student Data Reporting), respectively; or

(iii) Institution offers degrees or courses leading to a degree for which it does not have Board approval; or

(iv) Institution fails to maintain the Standards of Operation as defined in §7.4 of this chapter; or

(v) Failure to comply with the requirement to submit all accrediting agency correspondence, reports, or findings and institutional responses to such correspondence, reports, and findings if an institution is accredited by entities which are not recognized by the Board; or

(vi) Failure to fully comply with any additional conditions, restrictions, or reporting requirements placed upon the institution as part of its current Certificate of Authority.

(B) Process for revocation of Certificate of Authority to offer degrees in Texas:

(i) Board notifies institution of grounds for revocation as outlined in this paragraph via registered or certified mail;

(ii) Within ten (10) days of its receipt of the Commissioner's notice, the institution must either cease and desist operations or respond and offer proof of its continued qualification for the authorization, and/or submit data as required by this chapter;

(iii) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing;

(iv) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(C) Without a valid Certificate of Authority, the institution must immediately cease and desist all operations, including granting degrees, offering courses leading to degrees, receiving payments from students for courses which may be applicable toward a degree, or enrolling new students.

(i) If an institution must cease and desist operations, within forty-five (45) days of the adverse determination becoming final and binding, the institution must assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003.

(ii) The teach-out agreement shall be in writing, shall be subject to Board staff approval prior to implementation, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) Reapplication After Revocation of Certificate of Authority.

(i) The institution will not be eligible to reapply for a period of one hundred eighty (180) days.

(ii) The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

(iii) The period of time during which the institution does not hold a Certificate of Authority shall not be counted against the eight (8) year period within which the institution must achieve accreditation from a Board-recognized accrediting agency absent sufficient cause, as described in paragraph (7)(C) of this section; the time period begins to run again upon reinstatement.

(9) Closure of an Institution.

(A) The governing board, owner, or chief executive officer of an institution that plans to cease operation in the state of Texas shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(B) If an institution closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(C) If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003. The agreement shall be in writing, shall be subject to Board approval prior to implementation, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) The Certificate of Authority for an institution is automatically withdrawn as of the date the institution closes. The Commissioner may grant to an institution that has existing degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(i) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(ii) No new students shall be admitted to the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board, or Board staff, as delegated, or the transferred degree program already has such approval.



(E) The institution shall transfer all academic records pursuant to §7.15 of this chapter (relating to Academic Records Maintenance, Protection, and Repository of Last Resort).

*§7.16. Financial Protections for Student Tuition and Fees.*

The Board is required to ensure Certificate of Authorization and Certificate of Authority institutions maintain reserves, lines of credit, or surety instruments sufficient to allow the institution or person to fulfill its educational obligations of the current term to its enrolled students if the institution or person violates any minimum standard which results in loss of prepaid tuition or fees, or is unable to continue to provide instruction to its enrolled students.

(1) Sufficient Financial Resources Documentation.

(A) Sufficient financial resources may be demonstrated by proof of an adequate reserve, line of credit, or surety instrument. A surety instrument includes but is not limited to, a surety bond, an assignment of a savings or escrow account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of postsecondary institutions.

(B) The documented reserves, lines of credit, or surety instruments must be:

(i) In a form and amount acceptable to the Board;

(ii) In an amount equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum unearned tuition and fees of the institution for a period or term during the applicable academic year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where an institution's year consists of one or more such periods or terms. Unearned tuition and fees are tuition or fees billed to a student for the current term. No tuition or fee billed for the current term may be considered earned by the institution until the current term has been completed and students have received grades for courses taken during the term;

(iii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of unearned tuition or any fees as a result of violation of any minimum standard or as a result of the institution ceasing operation, provide evidence satisfactory to the Board of its financial ability to provide such indemnification, and list the amount of surety liability the guaranteeing entity will assume; and

(iv) Held in Travis County, Texas, and conditioned to allow only the Board to withdraw funds for the benefit of persons identified in clause (iii) of this subparagraph.

(C) The institution shall include a letter signed by an authorized representative of the institution showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the reserves, lines of credit or surety instrument.

(D) Falsifying surety calculation or surety instrument will be reported to the Attorney General per §7.5(m) of this title (relating to Degree Granting Colleges and Universities Other Than Texas Public Institutions).

(2) Tuition and Fee Recovery.

(A) A Qualifying Event, when used in this subchapter, shall mean an event in which a student or enrollee of the school or

his/her parent or guardian is determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of the institution or location ceasing operation.

(B) The Board may withdraw the total amount of reserves, lines of credit, or surety instrument designated for tuition and fee recovery at the time the Board deems the institution or person has violated any minimum standard which results in loss of prepaid tuition or fees, or upon notice that an institution is unable to continue to provide instruction to its enrolled students.

(C) A student, enrollee, parent or guardian is required to apply for an unearned tuition and fee claim in order to be eligible for reimbursement.

(i) Board staff will make available an application claim form. Claim forms must include original signatures to be considered valid.

(ii) Board staff will determine supporting documentation required for each claim and notify the claimant. Supporting documentation may include an enrollment agreement, transcript, report card, loan agreement, cancelled checks, or other documentation which provides information on tuition and fee amounts paid during the current term and the institution's failure to meet minimum standards or continue operations.

(iii) Claims must be initiated by the claimant with a completed application claim form within 12 months of a Qualifying Event. The Board will publish the Qualifying Event date which will begin the 12 months claim period.

(iv) Board staff will review all student tuition and fee recovery claims within 30 days after the claim period ends. Refunds will be made in a timely manner either upon determination all possible valid claims have been filed before the end of the claim period or at the end of the 12 months claim period.

(I) Payments will be made based on verified tuition and fee amounts claimed.

(II) If the amount of institutional reserves, lines of credit, or surety instrument able to be withdrawn by the Board at the time of the Qualifying Event does not allow full payment of tuition and fees to all claimants, Board staff will apportion refunds according to verified tuition and fees claimed as a percentage of total amount claimed versus total amount withdrawn.

(III) If the amount of institutional reserves, lines of credit, or surety instrument withdrawn by the Board at the time of the Qualifying Event is greater than the total claims made during the 12 month claim period, the Coordinating Board reserves the right to retain a portion of the excess funds in order to maintain any student academic records deposited in the Coordinating Board's student academic record repository as a result of the Qualifying Event. Any excess funds withdrawn but not paid in claims or used for student academic record repository maintenance will be returned to the institution, receiver, bankruptcy trustee, or other entity holding institutional funds at the time funds may be returned.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2020.

TRD-202000571



## CHAPTER 21. STUDENT SERVICES

### SUBCHAPTER W. TEXAS WORKING OFF-CAMPUS: REINFORCING KNOWLEDGE AND SKILLS (WORKS) INTERNSHIP PROGRAM

#### 19 TAC §§21.700 - 21.707

The Texas Higher Education Coordinating Board adopts new rules for Chapter 21, Subchapter W, §§21.700 - 21.707 of Board rules, concerning the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program, with changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6199). The rules will be republished.

The proposed new section to Board rules establishes the requirements, conditions, and limitations concerning the Texas WORKS Internship Program. This program will provide undergraduate students with paid, off-campus internships to strengthen their marketable skills and support their transition to the workforce.

Although no external comments were received, Coordinating Board staff made non-substantive changes to the proposed rules to address the following:

- Clarification of process and terms;
- Correct grammar; and
- Include required legislative language.

The new rules are adopted under Texas Education Code, §§56.0851 - 56.0857, which provides the Coordinating Board with the authority to establish the Texas WORKS Internship Program.

*§21.700. Authority and Purpose of the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.*

(a) Authority. The Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program is authorized by Texas Education Code, Chapter 56, Subchapter E-1, §§56.0851 - 56.0857.

(b) Purpose. The purpose of the program is to provide paid internships funded in part by the State of Texas to enable students employed through the program to attend public or private institutions of higher education in Texas while exploring career options, developing and improving career readiness, and strengthening marketable skills.

*§21.701. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Coordinating Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program or Texas WORKS Internship Program--The Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.

(4) Eligible Employer--An entity that meets the requirements listed in §21.702 of this subchapter.

(5) Financial need--Eligibility guidelines will be determined by the Commissioner or his or her designee.

(6) Half-time student--For undergraduates, enrollment or expected enrollment for the equivalent of six or more semester credit hours per regular semester.

(7) Eligible institution:

(A) an institution of higher education as defined by TEC §61.003 (8); or

(B) a private or independent institution of higher education, as defined by TEC §61.003(15), other than a private or independent institution of higher education offering only professional or graduate degrees.

(8) Eligible Wages--Gross wages paid to an individual student as required by the student's internship.

(9) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(10) Administrative and Financial Capacity--An employer must have legal authority to operate within the state of Texas, be in good standing and have the financial responsibility and administrative capability to administer the Texas WORKS Internship program.

*§21.702. Employer Eligibility and Participation Requirements.*

(a) In order to participate in the WORKS Internship Program, an employer must:

(1) be a private nonprofit or for-profit entity or a governmental entity;

(2) enter into an agreement with the Coordinating Board;

(3) provide employment to a student placed through the program in nonpartisan and nonsectarian activities that relate to the student's career interests with identifiable marketable skills;

(4) use program positions only to supplement and not supplant positions normally filled by persons who are not eligible to participate in the program, as provided by this subchapter;

(5) provide the entirety of an employed student's wages and employee benefits as well as submit eligible wages to the Coordinating Board for reimbursement;

(6) follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admission or employment;

(7) Demonstrate the administrative and financial capacity to carry out the employer's responsibilities under the program, including the ability to pay full wages and benefits to a student employed through the program.

(A) An employer must demonstrate its ability to properly administer the Texas WORKS Internship program. Administrative capability focuses on the processes, procedures, and personnel used in administering the program and comply with reporting requirements. Eligible employers must have an adequate internal system of checks

and balances, monitoring and evaluating marketable skills, authorizing, and disbursing funds, and reporting data accurately and in a timely manner.

(B) The Coordinating Board determines an employer's financial capacity based on its ability to meet all its financial obligations, meet third-party financial audit requirements, and satisfactorily resolved any past internship performance violations.

(b) An employer is not eligible to participate in the program if the employer is:

(1) a public or private institution of higher education in Texas; or

(2) a career school or college, as defined by TEC §132.001.

#### §21.703. *Employer Agreement.*

An agreement between the Coordinating Board and participating employers will establish the roles and responsibilities, base wages, Coordinating Board reimbursement amount, minimum work hours for students employed, compliance with hiring and employment laws, and data reporting terms and conditions.

#### §21.704. *Employer Reimbursement.*

All employers will be required to login and have access to the Texas WORKS portal to upload invoices and receive reimbursement for eligible paid student wages.

#### §21.705. *Qualified Internship Opportunity.*

(a) A qualified internship position must meet a specific set of criteria, including:

(1) Internship must identify marketable skills to be strengthened or gained;

(2) Internship must be paid;

(3) Internship must be at least 8 weeks in duration;

(4) Intern must work at minimum 12 hours per week;

(5) Intern activities may not be political or sectarian in nature;

(6) No more than 25% of intern's work can be administrative in nature;

(7) No more than 50% of the eligible employer's workforce may be interns; and

(8) Federal work study funds may not be received or used for the internship position.

(b) The Coordinating Board has the right to set a maximum number of internship opportunities per eligible employer.

(c) In the event that available funds are insufficient to award all selected eligible students, a priority determination clause must be included in the employer agreement to govern placement and reimbursement.

#### §21.706. *Student Eligibility.*

(a) To be eligible for employment in the Program a person shall:

(1) be a resident of Texas;

(2) be enrolled for at least the number of hours required of a half-time student, and be seeking a degree or certification at an eligible institution the semester prior to the assigned internship;

(3) establish financial need in accordance with Board procedures; and

(4) must be an undergraduate student enrolled in a degree or certificate program at an eligible institution.

(b) A person is not eligible to participate in the Program if the person has not graduated from high school or received the equivalent of a high school diploma.

(c) A person may not be employed in more than one Texas WORKS internship at a time.

#### §21.707. *Records Retention.*

All employers participating in the Texas WORKS Internship program shall:

(1) Maintain its records and accounts of all transactions related to intern placement, benefit and wages for not less than seven (7) years after agreement expiration to ensure a full accounting of all funds received, disbursed, and expended by the employer. A participating employer shall immediately make available, upon request of the Coordinating Board, its representative(s), or an auditing entity authorized by law or regulation, all documents and other information related to the Texas Works Internship program.

(2) Immediately make available upon request, records and accounts for inspecting, monitoring, programmatic or financial auditing, or evaluation by the Coordinating Board, its representative(s) and an auditing entity authorized by law or regulation for a period not less than seven (7) years, or whichever is later:

(A) after completion of all services under the Texas Works Internship program; or

(B) after the date of the receipt of the participating employer's final claim for reimbursement or submission of the final expenditure report; or

(C) upon final resolution of all invoice questions related to the Texas Works Internship program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2020.

TRD-202000569

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Texas Higher Education Coordinating Board

Effective date: March 2, 2020

Proposal publication date: October 25, 2019

For further information, please call: (512) 427-6318



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

#### SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §§249.12, 249.14, 249.15

The State Board for Educator Certification (SBEC) adopts amendments to §§249.12, 249.14, and 249.15, concerning enforcement actions and guidelines. The amendments to §249.12 and §249.15 are adopted with changes to the proposed text as published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6205) and will be republished. The amendment to §249.14 is adopted without changes to the proposed text as published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6205) and will not be republished. The adopted amendments to 19 Texas Administrative Code (TAC) Chapter 249, Subchapter B, implement House Bill (HB) 3, Senate Bills (SBs) 1230, 1476, and 37, 86th Texas Legislature, 2019, by reflecting new reporting requirements for superintendents, principals, and directors of public schools and private school administrative officers; adding individuals listed on the registry of persons ineligible to work in public schools to the list of people that must be fired or refused employment by a certified educator; and removing the reference to student loan default as a ground for discipline by the SBEC. The adopted amendments also make technical changes to improve the readability of provisions and to align citations.

#### REASONED JUSTIFICATION:

##### *Contract Abandonment*

In response to public comment, the SBEC took action to remove the proposed amendment to §249.12, Administrative Denial; Appeal, which would have added a new subsection (b)(7) to allow the SBEC to deny the certificate of a person who has abandoned a TEC, Chapter 21, contract within the past 12 months. The SBEC can use its existing authority under §249.15, Disciplinary Action by State Board for Educator Certification, to place restrictions on the issuance of a new certificate for individuals whose certificates expire before the SBEC is able to effectuate a sanction. Conforming technical edits were also made to §249.12.

##### *House Bill 3, 86th Texas Legislature, 2019*

Throughout §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition, and §249.15, Disciplinary Action by State Board for Educator Certification, the adopted amendments modify "open-enrollment charter school" to read "charter school" to comport with the changes to TEC, Chapter 21, in HB 3, which now includes all forms of charter entities, whether open-enrollment or otherwise.

HB 3 also creates a registry of persons not eligible for employment in Texas public schools and requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated when there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor. To reflect these new requirements, the adopted amendments add reporting to the commissioner of education under TEC, §22.093, to the list of required reporting for which an educator can be disciplined if the educator fails to report under §249.15(b)(4). The adopted amendments also reflect the registry of persons ineligible to work in public schools in §249.15(b)(12), which allows for SBEC to sanction an educator if the educator hires or fails to fire an employee on the registry.

HB 3 also modifies the requirements of TEC, §22.085, which sets out the criminal history that requires a school district, charter school, or shared services arrangement to discharge or refuse to hire an employee or applicant, to parallel TEC, §21.058, by

including individuals on deferred adjudication community supervision for which a defendant is required to register as a sex offender. To reflect these modifications, the adopted amendments add language regarding community supervision to the reference to TEC, §22.085, in §249.15(b)(12).

##### *Senate Bills 1230 and 1476, 86th Texas Legislature, 2019*

To implement SB 1230, the adopted amendment to §249.14(d) reflects the statute's language requiring a "chief administrative officer of a private school" to report to SBEC rather than to the "director of a private school." This semantic change does not change the meaning of the rule, which already required private school heads to report misconduct to the SBEC.

Similarly, to reflect the creation of misconduct reporting requirements for private school chief administrative officers in SB 1230, the adopted amendments add TEC, §21.0062, to the list of reporting obligations for which the SBEC can discipline a certified educator if the educator fails to comply.

To reflect the requirements of SB 1476 and SB 1230, the adopted amendment to §249.14(d) allows superintendents and directors of public schools not to report evidence of misconduct if the superintendent or director has completed an investigation before the educator resigned and determined that the educator did not engage in misconduct.

##### *Senate Bill 37, 86th Texas Legislature, 2019*

To implement SB 37, the adopted amendments remove a reference to student loan default as a ground for discipline by the SBEC in §249.15(f).

The adopted amendments also include technical edits to remove language regarding sanctions for failing to report from §249.14(d) and (e) because this language is redundant with §249.14(h) and makes §249.14(d) and (e) difficult to read.

The adopted amendments also make the list of "Priority 1" conduct match in §249.15(b)(9) and §249.14(k)(1). In response to public comment, the SBEC amended §249.15(b)(9)(L) to add a citation to §247.2(3)(H), the provision addressing appropriate educator-student boundaries in the Educators' Code of Ethics.

The State Board of Education (SBOE) took no action on the review of §§249.12, 249.14, and 249.15 at the January 31, 2020 SBOE meeting.

**SUMMARY OF COMMENTS AND RESPONSES.** The public comment period on the proposal began October 25, 2019, and ended November 25, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the December 6, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

**Comment:** Texas State Teachers Association (TSTA) commented that there is no statutory basis for the proposed amendment to 19 TAC §249.12(b)(7) that allows the SBEC to administratively deny renewal of the educator's certification following an educator's abandonment of a TEC, Chapter 21, contract within 12 months.

**Response:** The SBEC disagrees. The SBEC has broad statutory rulemaking authority to "provide for the regulation of educators" and "provide for disciplinary proceedings" as necessary under TEC, §21.041(b)(1) and (7). The SBEC at adoption took ac-

tion to strike the proposed amendment to 19 TAC §249.12(b)(7) to allow for revisions.

Comment: TSTA commented that the language of 19 TAC §249.12(b)(7) should address whether the school district has provided all of the required elements of a contract abandonment report under 19 TAC §249.14(j)(1)-(3).

Response: The SBEC agrees. The SBEC at adoption took action to strike the proposed amendment to 19 TAC §249.12(b)(7) to allow for revisions.

Comment: TSTA commented that TEC, §21.006 and §21.0062, do not require reporting to the commissioner of education and recommended removing those provisions from proposed 19 TAC §249.15(b)(4).

Response: The SBEC disagrees. Adopted §249.15(b)(4) incorporates all the various statutory reporting requirements that the Texas Legislature has put on educators by virtue of their position, from child abuse to educator misconduct. The use of the disjunctive "or" in the adopted rules separates the various authorities to which educators may be required to report under the statutes, and thereby does not require an educator to report to any entity not required by statute.

Comment: TSTA commented that there should be a citation to a definition for "professional educator-student relationships and boundaries" in the proposed amendment to 19 TAC §249.15(b)(9)(L).

Response: The SBEC agrees. To parallel the citation to the provision of the Educators' Code of Ethics that is included in the clause regarding inappropriate communication, the SBEC at adoption approved a change to include the language "as described in §247.2(3)(H) of this title."

Comment: An individual commented that the SBEC should not remove the reference to student loan default from 19 TAC §249.15(f).

Response: The SBEC disagrees. The adopted revision reflects a change in the law from SB 37, 86th Texas Legislature, 2019, which prohibits the SBEC from taking disciplinary action against an educator for default on a student loan.

Comment: Texas Classroom Teachers Association commented in support of the proposed amendment to 19 TAC §249.12(b)(7).

Response: The SBEC agrees.

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §21.006(a), (b), (c), (c-1), and (c-2), as amended by House Bill (HB) 3 and Senate Bill (SB) 1476, 86th Texas Legislature, 2019, which requires the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the State Board for Educator Certification (SBEC) within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated when there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct; TEC, §21.006(b-2), as amended by HB 3, 86th Texas Legislature, 2019, which requires a principal of a school district, district of innovation, or charter school to notify the superintendent within seven days when an educator is terminated or resigns, and there is evidence that the educator

engaged in misconduct; TEC, §21.006(f) and (g), which give the SBEC rulemaking authority to implement TEC, §21.006; TEC, §21.006(g-1), as added by HB 3, 86th Texas Legislature, 2019, which requires the SBEC to develop and maintain an internet portal through which a superintendent or director can file a report confidentially and securely; TEC, §21.006(i), as amended by HB 3, 86th Texas Legislature, Regular Session, 2019, which gives the SBEC authority to impose administrative penalties on principals and superintendents who fail to fulfill their reporting obligations to the SBEC under TEC, §21.006; TEC, §21.0062, added by SB 1230, 86th Texas Legislature, 2019, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated when there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records; requires that the SBEC give the educator notice and an opportunity to show cause; requires that the SBEC limit the amount of time the notice can appear on the educator's certification; and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that Texas Education Agency (TEA) staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary for its own procedures, regulate educators, specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581(a), as amended by SB 1230, 86th Texas Legislature, 2019, which gives the SBEC authority to sanction the educator certification of person who assists another person in obtaining employment at a school district, private school, or open-enrollment charter school when the certified educator knew the other person had previously engaged in sexual misconduct with a minor or student in violation of the law; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearing house and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, as amended by HB 3, 86th Texas Legislature, 2019, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and to refuse to hire those that have certain criminal history; TEC, §22.087, which requires superinten-

dents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangement to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearing house; TEC, §22.092, as added by HB 3, 86th Texas Legislature, 2019, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, as added by HB 3, 86th Texas Legislature, 2019, which requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated when there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.058(d-1) and (e), which set out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; Texas Family Code (TFC), §261.308(d) and (e), which requires the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), as amended by SB 1231, 86th Texas Legislature, 2019, which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), as amended by SB 1342, 86th Texas Legislature, 2019, which allows the SBEC to suspend or revoke an educator's certificate, or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, as amended by SB 1342, 86th Texas Legislature, 2019, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, as amended by SB 1342, 86th Texas Legislature, 2019, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, TGC, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, as amended by SB 1342, 86th Texas Legislature, 2019, which requires that the SBEC notify a license holder or applicant after denying, suspending or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, as amended by SB 37, 86th Texas Legislature, 2019, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and Every Student Succeeds Act (ESSA), 20 United States Code (USC), §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement TEC, §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), as amended by HB 3 and SB 1476, 86th Texas Legislature, 2019, (f), (g), (g-1), as added by HB 3 and SB 1476, 86th Texas Legislature, 2019; and (i), as amended by HB 3, 86th Texas Legislature, 2019; 21.0062, as added by SB 1230, 86th Texas Legislature, 2019; 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 22.082; 22.0831; 22.085, as amended by HB 3, 86th Texas Legislature, 2019; 22.087; 22.092, as added by HB 3, 86th Texas Legislature, 2019; and 22.093, as added by HB 3, 86th Texas Legislature, 2019; TGC, §411.090 and §2001.058(e); TFC, §261.308(d) and (e) and §261.406(a) and (b), as amended by SB 1231, 86th Texas Legislature, 2019; TOC, §§53.021(a), as amended by SB 1342, 86th Texas Legislature, 2019; 53.022 and 53.023, as amended by SB 1342, 86th Texas Legislature, 2019, 53.024, 53.025, 53.051, as amended by SB 1342, 86th Texas Legislature, 2019, 53.052, and 56.003, as amended by SB 37, 86th Texas Legislature, 2019; and the ESSA, 20 USC, §7926.

*§249.12. Administrative Denial; Appeal.*

(a) This section applies to administrative denials, as that term is defined in §249.3 of this title (relating to Definitions). This section does not apply to the denial of an application for a certificate that has been permanently revoked, and it does not apply to the failure to issue a certificate because specific certification requirements have not been met.

(b) The Texas Education Agency (TEA) staff may administratively deny any of the matters set out in subsection (a) of this section based on satisfactory evidence that:

- (1) the person filed a fraudulent application;
- (2) the person assisted another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative or personnel files when the person knew that the other person had previously engaged in an inappropriate relationship with a minor or student in violation of the law;
- (3) the person has committed an act that would make them subject to required revocation under the Texas Education Code, §21.058;
- (4) the person has committed an act that would make them subject to mandatory permanent revocation or denial under §249.17(i) of this title (relating to Decision-Making Guidelines);
- (5) the person has engaged in conduct or committed a crime or an offense that:
  - (A) demonstrates that the person lacks good moral character;
  - (B) demonstrates that the person is unworthy to instruct or to supervise the youth of this state; or
  - (C) constitutes the elements of a crime or offense relating directly to the duties and responsibilities of the education profession; or
- (6) the person failed to comply with the terms or conditions of an order issued by or on behalf of the State Board for Educator Certification or the TEA staff.

(c) The TEA staff shall provide written notice of the denial and the factual and legal reasons for it to the person whose application or request has been administratively denied. The notice shall be given by registered or certified mail to the address the person has provided in the application or request that is being denied. The person may attempt to show compliance with legal requirements by written submission or

by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided. The 30-day deadline to appeal and request a hearing is not tolled during any attempts to show cause.

(d) The appeal and request for a SOAH hearing of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings). In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the person received or is deemed to have received written notice of the administrative denial. Unless otherwise proved by the person, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the person. The TEA staff may dismiss an appeal that is not timely filed without further action.

(e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the SOAH for a contested case hearing.

*§249.15. Disciplinary Action by State Board for Educator Certification.*

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:

(1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;

(2) issue an inscribed or non-inscribed reprimand;

(3) suspend a certificate for a set term or issue a probated suspension for a set term;

(4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently;

(5) impose any additional conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials; or

(6) impose an administrative penalty of \$500-\$10,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.

(b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

(1) the person has conducted school or education activities in violation of law;

(2) the person is unworthy to instruct or to supervise the youth of this state;

(3) the person has violated a provision of the Educators' Code of Ethics;

(4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, and §249.14(d)-(f) of this title;

(5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);

(6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;

(7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);

(8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment);

(9) the person has committed an act described in §249.14(k)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:

(A) any conduct constituting a felony criminal offense;

(B) indecent exposure;

(C) public lewdness;

(D) child abuse and/or neglect;

(E) possession of a weapon on school property;

(F) drug offenses occurring on school property;

(G) sale to or making alcohol or other drugs available to a student or minor;

(H) sale, distribution, or display of harmful material to a student or minor;

(I) certificate fraud;

(J) state assessment testing violations;

(K) deadly conduct; or

(L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries as described in §247.2(3)(H) of this title, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;

(10) the person has committed an act that would constitute an offense (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:

(A) offenses involving moral turpitude;

(B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;

(C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, dis-

tribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;

(D) offenses involving school property or funds;

(E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or

(G) felony offenses involving driving while intoxicated (DWI);

(11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses;

(12) the person has failed to discharge an employee or to refuse to hire an applicant when the employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, when the person knew that the employee or applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), or when the person knew or should have known through a criminal history record information review that the employee or applicant had been placed on community supervision or convicted of an offense in accordance with the TEC, §22.085;

(13) the person assisted another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, when the educator knew or had probable cause to believe that such person engaged in an inappropriate relationship with a minor or student;

(14) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or

(15) the person has failed to comply with an order or decision of the SBEC.

(c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.

(g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.

(1) Procedures for maintaining security shall be specified in the appropriate test administration materials.

(2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

(3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).

(4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.

(5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

(6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:

(A) viewing a test before, during, or after an assessment unless specifically authorized to do so;

(B) duplicating secure examination materials;

(C) disclosing the contents of any portion of a secure test;

(D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

(E) changing or altering a response or answer of an examinee to a secure test item or prompt;

(F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;

(G) fraudulently exempting or preventing a student from the administration of a required state assessment;

(H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or

(I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.

(7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.

(8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection



may be subject to any of the sanctions provided by subsection (a) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000611

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Director, Rulemaking

State Board for Educator Certification

Effective date: March 5, 2020

Proposal publication date: October 25, 2019

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 15. TEXAS STATE BOARD OF PHARMACY

#### CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 22 TAC §281.7

The Texas State Board of Pharmacy adopts amendments to §281.7, concerning Grounds for Discipline for a Pharmacist License. These amendments are adopted with minor punctuation changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 68). The rule will be republished.

The amendments remove failing to repay a student loan as a ground for discipline of a pharmacist license, in accordance with SB 37.

The board received one comment in support of the amendments from Craig Chapman, R.Ph.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

###### *§281.7. Grounds for Discipline for a Pharmacist License.*

(a) For the purposes of the Act, §565.001(a)(2), "unprofessional conduct" is defined as engaging in behavior or committing an act that fails to conform with the standards of the pharmacy profession, including, but not limited to, criminal activity or activity involving moral turpitude, dishonesty, or corruption. This conduct shall include, but not be limited to:

(1) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription;

(2) dispensing a prescription drug order pursuant to a prescription from a practitioner as follows:

(A) the dispensing of a prescription drug order not issued for a legitimate medical purpose or in the usual course of professional practice shall include the following:

(i) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature; or

(ii) dispensing controlled substances or dangerous drugs when the pharmacist knows or reasonably should have known that the controlled substances or dangerous drugs are not necessary or required for the patient's valid medical needs or for a valid therapeutic purpose;

(B) the provisions of subparagraph (A)(i) and (ii) of this paragraph are not applicable for prescriptions dispensed to persons with intractable pain in accordance with the requirements of the Intractable Pain Treatment Act, or to a narcotic drug dependent person in accordance with the requirements of Title 21, Code of Federal Regulations, §1306.07, and the Regulation of Narcotic Drug Treatment Programs Act;

(3) delivering or offering to deliver a prescription drug or device in violation of this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules promulgated pursuant to these Acts;

(4) acquiring or possessing or attempting to acquire or possess prescription drugs in violation of this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules adopted pursuant to these Acts;

(5) distributing prescription drugs or devices to a practitioner or a pharmacy not in the course of professional practice or in violation of this Act, the Controlled Substances Act, Dangerous Drug Act, or rules adopted pursuant to these Acts;

(6) refusing or failing to keep, maintain or furnish any record, notification or information required by this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules adopted pursuant to these Acts;

(7) refusing an entry into any pharmacy for any inspection authorized by the Act;

(8) making false or fraudulent claims to third parties for reimbursement for pharmacy services;

(9) operating a pharmacy in an unsanitary manner;

(10) making false or fraudulent claims concerning any drug;

(11) persistently and flagrantly overcharging for the dispensing of controlled substances;

(12) dispensing controlled substances or dangerous drugs in a manner not consistent with the public health or welfare;

(13) failing to practice pharmacy in an acceptable manner consistent with the public health and welfare;

(14) refilling a prescription upon which there is authorized "prn" refills or words of similar meaning, for a period of time in excess of one year from the date of issuance of such prescription;

(15) engaging in any act, acting in concert with another, or engaging in any conspiracy resulting in a restraint of trade, coercion, or a monopoly in the practice of pharmacy;

(16) sharing or offering to share with a practitioner compensation received from an individual provided pharmacy services by a pharmacist;

(17) obstructing a board employee in the lawful performance of his or her duties of enforcing the Act;

(18) engaging in conduct that subverts or attempts to subvert any examination or examination process required for a license to practice pharmacy. Conduct that subverts or attempts to subvert the pharmacist licensing examination process includes, but is not limited to:

(A) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the board or questions contained in a question pool of any examination administered by the board;

(B) copying or attempting to copy another candidate's answers to any questions on any examination required for a license to practice pharmacy;

(C) obtaining or attempting to obtain confidential examination materials compiled by testing services or the board;

(D) impersonating or acting as a proxy for another in any examination required for a license to practice pharmacy;

(E) requesting or allowing another to impersonate or act as a proxy in any examination required for a license to practice pharmacy; or

(F) violating or attempting to violate the security of examination materials or the examination process in any manner;

(19) violating the provisions of an agreed board order or board order;

(20) dispensing a prescription drug while not acting in the usual course of professional pharmacy practice;

(21) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, the Controlled Substances Act, or rules adopted pursuant to those Acts;

(22) using abusive, intimidating, or threatening behavior toward a board member or employee during the performance of such member's or employee's lawful duties;

(23) failing to establish or maintain effective controls against the diversion or loss of controlled substances or dangerous drugs, loss of controlled substance or dangerous drug records, or failing to ensure that controlled substances or dangerous drugs are dispensed in compliance with state and federal laws or rules, by a pharmacist who is:

(A) a pharmacist-in-charge of a pharmacy;

(B) a sole proprietor or individual owner of a pharmacy;

(C) a partner in the ownership of a pharmacy; or

(D) a managing officer of a corporation, association, or joint-stock company owning a pharmacy. A pharmacist, as set out in subparagraphs (B) - (D) of this paragraph, is equally responsible with an individual designated as pharmacist-in-charge of such pharmacy to ensure that employee pharmacists and the pharmacy are in compliance with all state and federal laws or rules relating to controlled substances or dangerous drugs;

(24) failing to correct the issues identified in a warning notice by the specified time;

(25) being the subject of civil fines imposed by a federal or state court as a result of violating the Controlled Substances Act or the Dangerous Drug Act;

(26) selling, purchasing, or trading or offering to sell, purchase, or trade prescription drug samples; provided, however, this paragraph does not apply to:

(A) prescription drugs provided by a manufacturer as starter prescriptions or as replacement for such manufacturer's outdated drugs;

(B) prescription drugs provided by a manufacturer in replacement for such manufacturer's drugs that were dispensed pursuant to written starter prescriptions; or

(C) prescription drug samples possessed by a pharmacy of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost and if:

(i) the samples are possessed in compliance with the Prescription Drug Marketing Act of 1987;

(ii) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3), or by a city, state or county government; and

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity;

(27) selling, purchasing, or trading or offering to sell, purchase, or trade prescription drugs:

(A) sold for export use only;

(B) purchased by a public or private hospital or other health care entity; or

(C) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3);

(D) provided that subparagraphs (A) - (C) of this paragraph do not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (C) of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules; or

(v) the dispensing of a prescription drug pursuant to a valid prescription drug order to the extent otherwise permitted by law;

(28) selling, purchasing, or trading, or offering to sell, purchase, or trade:

(A) misbranded prescription drugs; or

(B) prescription drugs beyond the manufacturer's expiration date;

(29) failing to respond and to provide all requested records within the time specified in an audit of continuing education records under §295.8 of this title (relating to Continuing Education Requirements); or

(30) allowing an individual whose license to practice pharmacy, either as a pharmacist or a pharmacist-intern, or a pharmacy technician/trainee whose registration has been disciplined by the board, resulting in the license or registration being revoked, canceled, retired, surrendered, denied or suspended, to have access to prescription drugs in a pharmacy.

(b) For the purposes of the Act, §565.001(a)(3), the term "gross immorality" shall include, but not be limited to:

(1) conduct which is willful, flagrant, and shameless, and which shows a moral indifference to standards of the community;

(2) engaging in an act which is a felony;

(3) engaging in an act that constitutes sexually deviant behavior; or

(4) being required to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure.

(c) For the purposes of the Act, §565.001(a)(5), the terms "fraud," "deceit," or "misrepresentation" in the practice of pharmacy or in seeking a license to act as a pharmacist shall be defined as follows:

(1) "Fraud" means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another.

(2) "Deceit" means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another.

(3) "Misrepresentation" means a manifestation by words or other conduct which is a false representation of a matter of fact.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000619

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Texas State Board of Pharmacy

Effective date: March 5, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



## 22 TAC §281.9

The Texas State Board of Pharmacy adopts amendments to §281.9, concerning Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee. These amendments are adopted without changes to the proposed text as published

in the January 3, 2020, issue of the *Texas Register* (45 TexReg 71). The rule will not be republished.

The amendments remove failing to repay a student loan as a ground for discipline of a pharmacy technician or a pharmacy technician trainee registration, in accordance with SB 37.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000626

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Executive Director

Texas State Board of Pharmacy

Effective date: March 5, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



## SUBCHAPTER C. DISCIPLINARY GUIDELINES

### 22 TAC §281.66

The Texas State Board of Pharmacy adopts amendments to §281.66, concerning Application for Reissuance or Removal of Restrictions of a License or Registration. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 72). The rule will not be republished.

The amendments remove arrests as an item the board may consider in determining the reinstatement of an applicant's previously revoked or canceled license or registration, in accordance with SB 1217.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000663

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Executive Director

Texas State Board of Pharmacy

Effective date: March 5, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



## 22 TAC §281.69

The Texas State Board of Pharmacy adopts new rule §281.69, concerning Automatic Denial or Revocation. The new rule is adopted with changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 73). The rule will be republished.

The new rule provides for the automatic denial of a pharmacist licensure application or revocation of a pharmacist license for certain criminal offenses, in accordance with HB 1899.

No comments were received.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

### §281.69. Automatic Denial or Revocation.

(a) Notwithstanding subsection (c) of this section, as required in Texas Occupations Code, §§108.052 and 108.053, the board shall deny an application for licensure as a pharmacist by or immediately upon receiving notification as specified in §108.053(b) revoke the pharmacist license of a person who:

(1) is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(2) has been previously convicted of or placed on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force; or

(3) has been previously convicted of or placed on deferred adjudication community supervision for the commission of an offense:

(A) under Penal Code, §§22.011, 22.02, 22.021, or 22.04, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections;

(B) committed:

(i) when the applicant held a license as a health care professional in this state or another state;

(ii) in the course of providing services within the scope of the applicant's license; and

(4) in which the victim of the offense was a patient of the applicant.

(b) As specified in Texas Occupations Code, §108.054, a person whose license application is denied under this subsection:

(1) based on a conviction or placement on deferred adjudication community supervision for an offense described by subsections (a)(2) or (3) of this section may reapply for a license if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal; or

(2) based on a requirement to register as a sex offender under Chapter 62, Code of Criminal Procedure, may reapply for a license after the expiration of the period for which the person is required to register.

(c) As specified in Texas Occupations Code, §108.055, a person whose license is revoked under this subsection:

(1) based on a conviction or placement on deferred adjudication community supervision for an offense described by subsections (a)(2) or (3) of this section may apply for reinstatement of the license if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal; or

(2) based on a requirement to register as a sex offender under Chapter 62, Code of Criminal Procedure, may apply for reinstatement of the license after the expiration of the period for which the person is required to register.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000669

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Texas State Board of Pharmacy

Effective date: March 5, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



## 22 TAC §281.70

The Texas State Board of Pharmacy adopts new rule §281.70, concerning Surety Bond. The new rule is adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 74). The rule will not be republished.

The new rule specifies that the board may require a surety bond if an investigation of a pharmacy involves section 565.002(a)(7) or (10) of the Pharmacy Act, in accordance HB 3496.

No comments were received.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000671

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Executive Director

Texas State Board of Pharmacy

Effective date: March 5, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



## CHAPTER 291. PHARMACIES

### SUBCHAPTER A. ALL CLASSES OF PHARMACIES

#### 22 TAC §291.1

The Texas State Board of Pharmacy adopts amendments to §291.1, concerning Pharmacy License Application. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 75). The rule will not be republished.

The amendments clarify that an applicant for a pharmacy license must submit a sworn disclosure statement, in accordance with HB 3496, and correct a grammatical error.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000636

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Texas State Board of Pharmacy

Effective date: March 5, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



#### 22 TAC §291.3

The Texas State Board of Pharmacy adopts amendments to §291.3, concerning Required Notifications. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 76). The rule will not be republished.

The amendments clarify that notification to the board of a change of managing officer shall include an updated sworn disclosure statement, in accordance with HB 3496, and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000642

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Texas State Board of Pharmacy

Effective date: March 5, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



#### 22 TAC §291.4

The Texas State Board of Pharmacy adopts new rule §291.4, concerning Sworn Disclosure Statement. The new rule is adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 79). The rule will not be republished.

The new rule creates a requirement for a pharmacy license applicant to submit a sworn disclosure statement, in accordance with HB 3496.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000644

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Effective date: March 5, 2020  
Proposal publication date: January 3, 2020  
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## 22 TAC §291.14

The Texas State Board of Pharmacy adopts amendments to §291.14, concerning Pharmacy License Renewal. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 80). The rule will not be republished.

The amendments add a requirement to submit a sworn disclosure statement, in accordance with HB 3496, and correct a grammatical error.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000673

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Executive Director  
Texas State Board of Pharmacy  
Effective date: March 5, 2020  
Proposal publication date: January 3, 2020  
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## SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

### 22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records. These amendments are adopted with changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 81). The rule will be republished.

The amendments remove an outdated reference to the Department of Public Safety and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occu-

pations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.34. *Records.*

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to Community Pharmacy (Class A)) shall be:

(A) kept by the pharmacy at the pharmacy's licensed location and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III-V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug unless the pharmacist complies with the requirements of §562.056 and §562.112 of the Act, and §291.29 of this title (relating to Professional Responsibility of Pharmacists).

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g., a practitioner taking calls for the patient's regular practitioner).

(D) The owner of a Class A pharmacy shall have responsibility for ensuring its agents and employees engage in appropriate decisions regarding dispensing of valid prescriptions as set forth in §562.112 of the Act.

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system that electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedules II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) Rubber stamped signatures may not be used.

(III) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense prescription drug orders for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug orders for Schedule II controlled substances issued by a practitioner in another state provided:

(-a-) the prescription is dispensed as specified in §315.9 of this title (relating to Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016);

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and

licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the twenty-first day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedules III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedules III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders issued by an advanced practice registered nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that is:

(I) issued by an advanced practice registered nurse or physician assistant provided the advanced practice registered nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice registered nurse or physician assistant authorized to issue a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice registered nurses or physician assistants designated by the practitioner must

be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice registered nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders.

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the confidential prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations.

(C) Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United Mexican States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a Schedule III-V controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order, including clarifications to the order given to the pharmacist by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Notwithstanding subparagraph (A) of this paragraph, a pharmacist may dispense a quantity less than indicated on the original prescription drug order at the request of the patient or patient's agent.

(C) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(D) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) of this subsection relating to accelerated refills.

(E) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III-V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(F) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a system that is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original prescriptions shall bear:



(i) the name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) the address of the patient; provided, however, that a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) the name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped, and if for a controlled substance, the DEA registration number of the practitioner;

(iv) the name and strength of the drug prescribed;

(v) the quantity prescribed numerically, and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic;  
or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) the intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) the date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code:

(I) the name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) the address and telephone number of the clinic where the prescription drug order was carried out or signed; and

(xii) if communicated orally or telephonically:

(I) the initials or identification code of the transcribing pharmacist; and

(II) the name of the prescriber or prescriber's agent communicating the prescription information.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hardcopy prescription or in the pharmacy's data processing system:

(i) the unique identification number of the prescription drug order;

(ii) the initials or identification code of the dispensing pharmacist;

(iii) the initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) the quantity dispensed, if different from the quantity prescribed;

(v) the date of dispensing, if different from the date of issuance; and

(vi) the brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(C) Prescription drug orders may be utilized as authorized in Title 40, Part 1, Chapter 19 of the Texas Administrative Code.

(i) A prescription drug order is not required to bear the information specified in subparagraph (A) of this paragraph if the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital). Such prescription drug orders must contain the following information:

(I) the full name of the patient;

(II) the date of issuance;

(III) the name, strength, and dosage form of the drug prescribed;

(IV) directions for use; and

(V) the signature(s) required by 40 TAC §19.1506.

(ii) Prescription drug orders for dangerous drugs shall not be dispensed following one year after the date of issuance unless the authorized prescriber renews the prescription drug order.

(iii) Controlled substances shall not be dispensed pursuant to a prescription drug order under this subparagraph.

(8) Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) of this subsection relating to accelerated refills.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (I) of this section.

(B) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or non-prescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) (relating to Operational Standards) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) Natural or manmade disasters. If a natural or man-made disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his or her

professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program:

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patient or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and Schedules IV and V controlled substances. Schedules II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug reg-

imen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) Records Relating to Dispensing Errors. If a dispensing error occurs, the following is applicable.

(A) Original prescription drug orders:

(i) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(B) Prescription drug order records maintained in a data processing system:

(i) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such lists shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained online. A patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this subsection shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;  
(III) date of each dispensing;  
(IV) quantity dispensed at each dispensing;  
(V) initials or identification code of the dispensing pharmacist;

(VI) initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (1) of this section.

(4) Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual record keeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system that can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout that contains the same information required on the daily printout as specified in paragraph (2)(C) of this subsection. The information on

this hard copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout that contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled. This hard copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name and the supervising physician's name if the prescription was issued by an advanced practice registered nurse, physician assistant or pharmacist;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via computer display, the following shall also be included on the hard copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) any changes made to a record of dispensing.

(D) The daily hard copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy printout shall be available within 72 hours with a certification by the individual providing the printout, stating that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records, for ensuring that such data processing system can produce the records outlined in this section, and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard copy printout of an audit trail for all dispensing (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide online retrieval (via computer display or hard copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy using a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded, or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for online data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy prescription drug order;

(B) on the daily hard copy printout; or

(C) via the computer display.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(1) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist to another pharmacist, by a pharmacist to a pharmacist-intern, or by a pharmacist-intern to another pharmacist.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, and if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, the name, address, DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or indicate in the prescription record that the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions), and the following:

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining, and if a controlled substance, the date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions), and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided, however, that during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone;

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes;

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order;

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred; and

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met:

(i) The original prescription is voided and the pharmacies' data processing systems store all the information as specified in paragraphs (5) and (6) of this subsection;

(ii) Pharmacies not owned by the same entity may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records; and

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request.

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the compounded preparation, including the formula, unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained that indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule II controlled substance, the following is applicable:

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy; and

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222) to the Divisional Office of the Drug Enforcement Administration.

(i) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee who is involved in the dispensing process, in the pharmacy's data processing system (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) copy 3 of DEA order forms (DEA 222) that have been properly dated, initialed, and filed, all copies of each unaccepted or defective order form and any attached statements or other documents, and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS), the original signed order and all linked records for that order;

(3) a copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled substances

listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(9) a copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to the DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph; and

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories that shall be maintained at the pharmacy;

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location;

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records; and

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(k) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that may legally own and maintain prescription drug records.

(l) Documentation of consultation. When a pharmacist consults a prescriber as described in this section, the pharmacist shall document such occurrences on the hard copy or in the pharmacy's data processing system associated with the prescription and shall include the following information:

- (1) date the prescriber was consulted;
- (2) name of the person communicating the prescriber's instructions;
- (3) any applicable information pertaining to the consultation; and
- (4) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation if the information is recorded on the hard copy prescription.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000679  
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Effective date: March 5, 2020  
Proposal publication date: January 3, 2020  
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## CHAPTER 295. PHARMACISTS

### 22 TAC §295.9

The Texas State Board of Pharmacy adopts amendments to §295.9, concerning Inactive License. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 91). The rule will not be republished.

The amendments add a requirement for one hour of continuing education on pain management as specified in section 481.0764 of the Texas Controlled Substances Act, and remove a requirement for one hour of continuing education on opioid abuse.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000655  
Allison Vordenbaumen Benz, R.Ph., M.S.  
Executive Director  
Texas State Board of Pharmacy  
Effective date: March 5, 2020  
Proposal publication date: January 3, 2020  
For further information, please call: (512) 305-8010



### 22 TAC §295.13

The Texas State Board of Pharmacy adopts amendments to §295.13, concerning Drug Therapy Management by a Pharmacist under Written Protocol of a Physician. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 93). The rule will not be republished.

The amendments specify the circumstances under which physician delegation to a pharmacist of specific acts of drug therapy management may occur, in accordance with SB 1056.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000683  
Allison Vordenbaumen Benz, R.Ph., M.S.  
Executive Director  
Texas State Board of Pharmacy  
Effective date: March 5, 2020  
Proposal publication date: January 3, 2020  
For further information, please call: (512) 305-8010



## CHAPTER 315. CONTROLLED SUBSTANCES

### 22 TAC §315.3

The Texas State Board of Pharmacy adopts amendments to §315.3, concerning Prescriptions - Effective September 1, 2016. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 95). The rule will not be republished.

The amendments remove the effective date from the short title and add a requirement for a person dispensing a Schedule II controlled substance prescription to provide written notice on the safe disposal of controlled substance prescription drugs, in accordance with HB 2088.



No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000657

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: March 5, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



## 22 TAC §315.16

The Texas State Board of Pharmacy adopts new rule §315.16, concerning Patient Access to Prescription Monitoring Program Prescription Record. The new rule is adopted with changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 97). The rule will be republished.

The new rule establishes the policy and procedures for a patient or the patient's legal guardian to obtain a copy of the patient's Prescription Monitoring Program prescription record, in accordance with HB 3284.

The board received a comment in support of the amendments from Craig Chapman, R.Ph. Mr. Chapman's comment also suggested including FedEx or UPS as delivery options for patients in rural areas who do not have a mailbox at the address listed on their driver's license. The board agreed and made changes to allow for requestors who do not have mailbox at the listed address to receive the records via a trackable delivery service with the requestor being responsible for the additional cost.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

*§315.16. Patient Access to Prescription Monitoring Program Prescription Record.*

(a) A patient, the patient's parent or legal guardian if the patient is a minor, or the patient's legal guardian if the patient is an incapacitated person as defined by §1002.017(2) of the Estates Code, may obtain a copy of the patient's prescription record, including a list of per-

sons who have accessed that record, as authorized in §481.076(a)(9) of the Texas Controlled Substances Act, by submitting the following to the board:

(1) a completed, notarized patient data request form, including any information or supporting documentation requested on the form;

(2) a copy of the requestor's driver's license or other state photo identity card issued by the state's Department of Motor Vehicles;

(3) if requesting as a parent or legal guardian of the patient, a copy of the patient's birth certificate or the order of guardianship over the patient; and

(4) a \$50 fee.

(b) The board shall deliver the requested records to the requestor via certified mail to the address listed on the requestor's driver's license or other state photo identity card issued by the state's Department of Motor Vehicles. If the requestor does not have a mailbox at the listed address, the board shall deliver the records to the requestor at the listed address via a trackable delivery service and the requestor shall be responsible for the cost.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000684

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: June 1, 2020

Proposal publication date: January 3, 2020

For further information, please call: (512) 305-8010



## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

#### 22 TAC §535.154

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.154, Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements, in Chapter 535, General Provisions, as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7598). The rule will not be republished.

The amendment to §535.154 removes an unnecessary word that was inadvertently left in the text during the last substantive change to the rule.

One comment was received agreeing with the proposed rule.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000600

Chelsea Buchholtz

Executive Director

Texas Real Estate Commission

Effective date: March 4, 2020

Proposal publication date: December 13, 2019

For further information, please call: (512) 936-3284



## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §535.216

The Texas Real Estate Commission (TREC) adopts amendments to §535.216, Renewal of License, in Subchapter R of Chapter 535, General Provisions, as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7599). The rule will not be republished.

The amendments implement statutory changes enacted by the 86th Legislature in SB 37 eliminating consideration of student loan defaults when deciding whether to grant an occupational license and SB 624 authorizing the Commission to deny license renewal if a license holder is in violation of a Commission order.

The amendments also reorganize this section to improve readability and increase transparency for license holders and members of the public. The Texas Real Estate Inspector Committee recommends these amendments.

Two comments were received. One commenter agreed with the proposed rule and one commenter disagreed but provided no reason for the disagreement. As such, the Commission declined to make any changes.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000601

Chelsea Buchholtz

Executive Director

Texas Real Estate Commission

Effective date: March 4, 2020

Proposal publication date: December 13, 2019

For further information, please call: (512) 936-3284



## CHAPTER 541. RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

### 22 TAC §541.1

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §541.1, Criminal Offense Guidelines, in Chapter 541 Rules Relating to the Provisions of Texas Occupations Code, Chapter 53, without changes to the proposed text as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7601). The rule will not be republished.

The amendments to §541.1 implements statutory changes enacted by the 86th Legislature in HB 1342 regarding the requirements for evaluating the criminal history of licensed applicants and license holders.

After considering the factors identified by the Legislature in HB 1342, the amendments revise the list of criminal offenses considered directly related to the duties and responsibilities of the licensed occupations under the jurisdiction of TREE.

Two comments were received. One commenter agreed with the proposed rule. One commenter raised a concern about inspectors being subject to the same background check requirements as brokers and sales agents. Staff recommends adopting the rule as proposed. While inspectors will continue to be subject to background check requirements, the only modification proposed that would differ from brokers and sales agents relates to the differences between what offenses are considered directly related to a particular license type. While felony DWI/DUI offenses continue to relate to the duties of brokers and sales agents because of the practice of driving with passenger clients, this is not the case with inspectors. As such, that offense type was removed from the list considered directly related to the duties of an inspector.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000602

Chelsea Buchholtz  
Executive Director  
Texas Real Estate Commission  
Effective date: March 4, 2020  
Proposal publication date: December 13, 2019  
For further information, please call: (512) 936-3284



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 442. INVESTIGATIONS AND HEARINGS

##### 25 TAC §§442.101 - 442.104

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §442.101, concerning Definitions; §442.102, concerning Complaints and Investigations; §442.103, concerning Procedure for Contested Cases for Counselor and Facility Licenses; and §442.104, concerning Administrative Penalties for Licensed Facilities and Counselors and Offender Education Programs.

The repeals are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7820). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The repeals are necessary to eliminate outdated rules, ensure consistency with Texas Health and Safety Code, and reflect the transition of these services from the Department of State Health Services (DSHS) to HHSC. Rules for chemical dependency treatment facilities currently exist at Texas Administrative Code (TAC) Title 25, Chapter 448, as authorized by Texas Health and Safety Code, Chapter 464. HHSC's due process procedures for chemical dependency treatment facilities are located in 25 TAC §448.409, Action Against a License.

#### COMMENTS

The 31-day comment period ended January 21, 2020.

During this period, HHSC did not receive any comments regarding the proposed rules repeals.

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2020.

TRD-202000555

Karen Ray  
Chief Counsel  
Department of State Health Services  
Effective date: March 1, 2020  
Proposal publication date: December 20, 2019  
For further information, please call: (512) 834-4569



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER RR. VALUATION MANUAL

##### 28 TAC §3.9901

The Commissioner of Insurance adopts amended 28 TAC §3.9901, relating to the adoption of changes to the valuation manual for reserving and related requirements. The amendment is adopted without changes to the proposed text published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7126). The rule will not be republished.

REASONED JUSTIFICATION. Section 425.073 of the Insurance Code requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC). Section 425.073(c) further requires that any changes to the valuation manual must be substantially similar to changes adopted by the NAIC. The Commissioner must determine that the NAIC's vote approving the changes represent at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 6, 2019, the NAIC adopted changes to the valuation manual with a vote meeting the requirements of Insurance Code §425.073(c). Therefore, TDI must adopt substantially similar changes to the valuation manual. The NAIC valuation manual, including the changes adopted through August 6, 2019, may be viewed at the following website: [www.naic.org/documents/cmte\\_a\\_latf\\_related\\_val\\_2020\\_edition.pdf](http://www.naic.org/documents/cmte_a_latf_related_val_2020_edition.pdf).

This version of the NAIC valuation manual includes non-substantive changes from the version referenced in the preamble to the proposed amendments. The NAIC corrected three typographical errors and added an explanatory sentence that had inadvertently been left out of the version of the NAIC valuation manual referenced in the proposal.

These corrections reflect the changes adopted on August 6, 2019, and therefore meet the requirements of Insurance Code §425.073(c). On page 49, a typographical error was corrected in the lapse rate formula at VM-20 §3.C.3.c.i, by replacing a "-" with a "/" in the ninth line from the bottom of the page. The line directly above the formula identifies the result of the formula

is a ratio which requires a "/." On page 87, a typographical error was corrected in the second guidance note for VM-20 §9.C.3.g, by changing the reference located on the fifth line from the bottom from "9.C.2.g" to "9.C.2.h." On page 206, an explanatory sentence was inserted on the seventh and eight lines from the top. The sentence is "[f]or non-jumbo contracts, the quarterly statutory maximum valuation interest rate is the quarterly valuation rate (Iq) rounded to the nearest one-fourth of one percent (1/4 of 1%)" and explains how the interest rate discussed on the previous page at VM-22 §3.C.3 is rounded. On page 238, a typographical error was corrected in the guidance note for VM-31 §3.D.1.a by changing the reference located on the nineteenth line from the bottom from "3.C.1.a" to "3.D.1.a."

**SUMMARY OF COMMENTS.** TDI did not receive any comments on the proposed amendment.

**STATUTORY AUTHORITY.** The Commissioner adopts amended 28 TAC §3.9901 under Insurance Code §425.073 and §36.001.

Section 425.073 requires the Commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by NAIC, and it provides that after a valuation manual has been adopted by the Commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2020.

TRD-202000584

James Person

General Counsel

Texas Department of Insurance

Effective date: March 3, 2020

Proposal publication date: November 22, 2019

For further information, please call: (512) 676-6584



## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

### CHAPTER 129. INCOME BENEFITS-- TEMPORARY INCOME BENEFITS

#### 28 TAC §129.5

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to §129.5 (concerning Work Status Reports). The proposed amendments are adopted without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5878) and will not be republished.

#### REASONED JUSTIFICATION

These rules are adopted to conform Rule 129.5 to Texas Labor Code §408.025(a-1) as amended by House Bill (HB) 387, 86th Legislature (2019). House Bill 387 authorizes a treating doctor to delegate authority to complete and sign a work status report to a licensed advanced practice registered nurse. Delegation requires both that the treating doctor has the authority under their licensing act to make the delegation and that the physician assistant or advanced practice registered nurse has the authority under their licensing act to accept the delegation. The Workers' Compensation Act must be read in context with the licensing acts regarding delegation authority of the treating doctor and receipt of delegation by the physician assistant and advanced practice registered nurse.

Labor Code §408.025(a-1) provides specific authority for a treating doctor to delegate the responsibility to complete and sign a work status report. Under the Workers' Compensation Act, a "[t]reating doctor" means the doctor who is primarily responsible for the employee's health care for an injury." Labor Code §401.011(42). And, a "doctor" includes a licensed doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic. Labor Code §401.011(17).

Subsection 129.5(b) is amended to provide that, as authorized under their licensing act, a treating doctor may delegate authority to complete, sign, and file a work status report to a licensed advanced practice registered nurse. Under Labor Code §408.025, the delegating treating doctor is responsible for the acts of the advanced practice registered nurse.

Subsection (c) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report in the form and manner prescribed by DWC.

Subsection (d) is amended to add delegated advanced practice registered nurses to the list of persons who shall be considered to have filed a complete work status report if the report contains the necessary information prescribed by DWC.

Subsection (e) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report and describes the situations when a work status report must be filed on an injured employee's claim.

Subsection (g) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report with the insurance carrier, employer, and injured employee within seven days of the day of receipt of certain information.

Subsection (i) is amended to add delegated advanced practice registered nurses to the list of persons who, upon completion of a work status report, shall file the report with the insurance carrier, employer, and the injured employee.

Subsection (j) is amended to add delegated advanced practice registered nurses to the list of persons who may bill for preparations of a work status report.

Subsection (j)(1) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifier "73" when billing for the work status report.

Subsection (j)(2) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifiers "73" and "RR" when billing for a work status report requested by an insurance carrier.

Subsection (j)(3) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifier "73" and "EC" when billing for an extra copy of a previously filed work status report requested by or through the insurance carrier.

DWC previously approved revisions to the DWC Form-073, *Work Status Report*, as the changes made by HB 387 went into effect on September 1, 2019. Advanced practice registered nurses have been authorized to sign work status reports since that date. These amendments merely conform DWC's rules to the revised statute.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE

The Office of Injured Employee Counsel submitted a comment in support of the proposed amendments.

The Texas Medical Association commented on the proposed amendments.

COMMENT: One commenter offered general support for the amendments.

RESPONSE: DWC appreciates the supportive comments.

COMMENT: One commenter requested that DWC clarify that the phrase "[i]f authorized under their licensing act" in subsection (b) is intended to apply to the treating doctor or the physician assistant or advanced practice registered nurse.

RESPONSE: DWC appreciates the comment. The phrase "[i]f authorized under their licensing act" in subsection (b) applies to a treating doctor. Labor Code §408.025(a-1) provides that "[a] treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee's ability to return to work." Health care practitioners may provide or delegate services within their scope of practice as authorized by their licensing act and their respective licensing boards. Specifically, Chapters 204 and 301, Occupations Code define the authority of physician assistants and advanced practice registered nurses who act as the agent of the supervising physician for medical services that are delegated by that physician. The Workers' Compensation Act must be read in context with the authority of doctors to delegate and the authority of a physician assistant or advanced practice registered nurse to receive delegations from doctors. No change was made in response to this comment.

COMMENT: One commenter noted that there are limitations inherent in the delegated health care practitioners' licensing acts that would effectively limit treating doctor delegation of the responsibility of signing a work status report. Additionally, the commenter stated that, based on a response to comments on the 2018 amendments to this rule, DWC understands that limitations in the Physician's Assistant Licensing Act continue to apply and should similarly apply to advanced practice registered nurses.

RESPONSE: DWC appreciates the comment and agrees that the licensing acts for the various health care professions in the Occupations Code include limitations that establish whether a responsibility may be delegated, when a responsibility may be delegated, and the scope of any delegation. As noted above, health care practitioners may provide or delegate services within their scope of practice as authorized by their licensing act and

their respective licensing boards. No change was made in response to this comment.

COMMENT: One commenter stated that "only treating doctors who are physicians licensed to practice medicine in the state of Texas may delegate the completion and signing of a work status report to a Texas-licensed physician assistant."

RESPONSE: DWC appreciates the comment. Labor Code §408.025(a-1) provides that "[a] treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee's ability to return to work." The plain language of the statute provides that a physician assistant or advanced practice registered nurse must be licensed in Texas in order to be eligible to receive the described delegation. There is no stated limitation as to the jurisdiction that has licensed the treating doctor. Injured employees can receive health care from doctors in many jurisdictions. No change was made in response to this comment.

#### STATUTORY AUTHORITY

DWC adopts amendments to §129.5 under Labor Code §§402.00111, 402.00116, 402.061, and 408.025.

Labor Code §402.00111 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of DWC under the Labor Code and other laws of this state.

Labor Code §402.00116 states that the commissioner is DWC's chief executive and has the powers and duties vested in DWC by the Labor Code and other workers' compensation laws of Texas.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code §408.025 provides that a treating doctor may delegate to a licensed advanced practice registered nurse authority to complete, sign, and file a work status report.

The amendments support the implementation of the Workers' Compensation Act, Labor Code Title 5, Subtitle A.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2020.

TRD-202000556

Kara Mace

Deputy Commissioner

Texas Department of Insurance, Division of Workers' Compensation

Effective date: March 1, 2020

Proposal publication date: October 11, 2019

For further information, please call: (512) 804-4703



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

## CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER B. NATURAL GAS

#### 34 TAC §3.30

The Comptroller of Public Accounts adopts new §3.30, concerning natural gas tax managed audits and determination of overpaid amounts, without changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 326). The rule will not be republished.

This section implements House Bill 2256, 86th Legislature, 2019.

In subsection (a), the comptroller defines the terms "managed audit" and "taxpayer." "Managed audit" is defined in the same manner as Tax Code, §201.3021(a) (Managed Audits). "Taxpayer" is any person required by Tax Code, Chapter 201 (Gas Production Tax) to file a producer's or first purchaser's report.

Subsection (b) implements Tax Code, §201.3021 as added by House Bill 2256. This subsection discusses the policies regarding managed audits for the natural gas tax and provides detailed procedures for managed audits.

Subsection (c) implements Tax Code, §201.207. This subsection discusses how taxpayers may use sampling of marketing cost transactions to establish that they have overpaid tax. In order to use sampling, the taxpayer must follow certain requirements, including use of a comptroller-approved sampling method, recording the method used, and making relevant records available for comptroller review. After establishing an overpayment, the taxpayer must amend all relevant reports and may then either use the overpayment as a credit on another natural gas tax return or request a refund. A taxpayer must amend all the relevant reports to allow the comptroller to track the application of refunds and credits to the taxpayer's account.

The comptroller did not receive any comments regarding adoption of the amendment.

This new section is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The new section implements Tax Code, §201.207 (Determination of Overpaid Amounts) and §201.3021 (Managed Audits).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2020.

TRD-202000574

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Effective date: March 2, 2020

Proposal publication date: January 10, 2020

For further information, please call: (512) 475-2220



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 2. CAPITOL ACCESS PASS

##### 37 TAC §2.8

The Texas Department of Public Safety (the department) adopts amendments to §2.8, concerning Expiration. This rule is adopted without changes to the proposed text as published in the December 20, 2019 issue of the *Texas Register* (44 TexReg 7857). The rule will not be republished.

This rule change is necessary to implement Senate Bill 616, 86th Legislative Session, which requires the Capitol Access Pass expire no later than the second anniversary of the date it was issued.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.0625(c), which authorizes the department to adopt rules to administer the Capitol Access Pass program; and Texas Government Code, §411.511, which authorizes the Public Safety Commission to establish by rule the expiration dates for the various licenses governed by Texas Government Code, Chapter 411, Subchapter Q.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000650

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: March 5, 2020

Proposal publication date: December 20, 2019

For further information, please call: (512) 424-5848



### CHAPTER 6. LICENSE TO CARRY HANDGUNS

#### SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

##### 37 TAC §6.13

The Texas Department of Public Safety (the department) adopts amendments to §6.13, concerning Photographs. This rule is adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7857). The rule will not be republished.

These amendments are necessary to implement the 86th Texas Legislature, House Bill 4195. This bill removes the statutory requirement of a color photograph as part of the application for a license to carry a handgun. Therefore, corresponding references within the rule on application requirements have been removed.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.179, which authorizes the department to adopt rules to establish the form of the license.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000653  
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General Counsel  
Texas Department of Public Safety  
Effective date: March 5, 2020  
Proposal publication date: December 20, 2019  
For further information, please call: (512) 424-5848



## CHAPTER 13. CONTROLLED SUBSTANCES

### SUBCHAPTER A. GENERAL PROVISIONS

#### 37 TAC §13.1

The Texas Department of Public Safety (the department) adopts amendments to §13.1, concerning Definitions. This rule is adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7858). The rule will not be republished.

These amendments are necessary to implement Senate Bill 616, 86th Texas Legislature. This bill repeals the Health and Safety Code provision requiring distributors and recipients of chemical precursors and laboratory apparatus obtain permits issued by the department. However, the bill leaves in place certain record keeping and reporting requirements for those who use precursor chemicals or laboratory apparatus, and the authority for audits and the inspection of records.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000656  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: March 5, 2020  
Proposal publication date: December 20, 2019  
For further information, please call: (512) 424-5848



## SUBCHAPTER B. PRECURSOR CHEMICAL LABORATORY APPARATUS (PCLA)

#### 37 TAC §§13.11, 13.12, 13.14, 13.15, 13.20, 13.22

The Texas Department of Public Safety (the department) adopts the repeal of §§13.11, 13.12, 13.14, 13.15, 13.20, and 13.22, concerning Precursor Chemical Laboratory Apparatus (PCLA). These repeals are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7859). The rules will not be republished.

The 86th Legislative Session, Senate Bill 616 repealed the Health and Safety Code provisions requiring distributors and recipients of chemical precursors and laboratory apparatus obtain permits issued by the department; therefore, these rules are obsolete.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000658  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: March 5, 2020  
Proposal publication date: December 20, 2019  
For further information, please call: (512) 424-5848



#### 37 TAC §§13.13, 13.16, 13.19, 13.21, 13.23

The Texas Department of Public Safety (the department) adopts amendments to §§13.13, 13.16, 13.19, 13.21, and 13.23, concerning Precursor Chemical and Laboratory Apparatus (PCLA). Sections 13.13, 13.16, 13.21, and 13.23 are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7860). Section 13.19(b) was changed to use the plural forms of "distributor" and "recipient." Section 13.19 will be republished.

These amendments are necessary to implement Senate Bill 616, 86th Texas Legislature. This bill repeals the Health and Safety

Code provision requiring distributors and recipients of chemical precursors and laboratory apparatus to obtain permits issued by the department. However, the bill leaves in place certain record keeping and reporting requirements for those who use precursor chemicals or laboratory apparatus, and the authority for audits and the inspection of records.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the chapter.

#### §13.19. *Inspection.*

(a) Upon request of the department, a distributor or recipient may be provided up to 24 hours, excluding weekends and holidays, to produce any or all records required to be maintained on site for inspection by the department.

(b) All distributors or recipients authorized to maintain an off-site central record keeping system shall, upon request, produce the requested records within two business days.

(c) If an individual maintains a record under this chapter using an automated data processing system and if the individual does not have a printer available on site, the individual must:

(1) Make a useable copy available to the department at the close of business the day after the audit; and

(2) Certify that the information contained within the copy is true and correct as of the date of audit and has not been altered, amended, or modified.

(d) No individual in charge of a premise, item, or record covered by the Act or this subchapter may refuse, or interfere with, an inspection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000660

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Texas Department of Public Safety

Effective date: March 5, 2020

Proposal publication date: December 20, 2019

For further information, please call: (512) 424-5848



## SUBCHAPTER C. PEYOTE DISTRIBUTORS

### 37 TAC §§13.31 - 13.44

The Texas Department of Public Safety (the department) adopts the repeal of §§13.31 - 13.44, concerning Peyote Distributors. These repeals are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7862). The rules will not be republished.

These rule changes are necessary to implement Senate Bill 616, 86th Legislative Session. Senate Bill 616 repeals the Health and Safety Code provision requiring peyote distributors register with the department.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000662

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Effective date: March 5, 2020

Proposal publication date: December 20, 2019

For further information, please call: (512) 424-5848



## CHAPTER 15. DRIVER LICENSE RULES

### SUBCHAPTER A. LICENSING REQUIREMENTS

#### 37 TAC §15.6

The Texas Department of Public Safety (the department) adopts amendments to §15.6, concerning Motorcycle License. This rule is adopted with a minor grammar change to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7863). The rule will be republished.

The 86th Texas Legislature enacted House Bill 3171, which repealed Texas Transportation Code, §521.225 requiring a restricted Class M license to operate a moped and redefined a motor-driven cycle as a motorcycle. This rule amendment removes references to moped licenses and motor-driven cycles.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

#### §15.6. *Motorcycle License.*

A driver who qualifies to operate a motorcycle will be issued a Class M license. When a driver is also qualified to operate a motor vehicle with a Class A, B, or C license, one license with any applicable restrictions will be issued. Parent or guardian authorization is required for applicants younger than 18 years of age.

(1) Class M license.



(A) The minimum age is 16 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course.

(B) This authorizes operation of all motorcycles and three-wheeled motorcycles.

(2) Restricted Class M license.

(A) The minimum age is 16 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course specific to the operation of a three-wheeled motorcycle.

(B) The minimum age is 15 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course specific to 250 cubic centimeter piston displacement or less.

(3) A Motorcycle Operator Training Program Certificate of Completion (Form MSB-8) or a completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum standards will be used as proof of successful completion of a department approved motorcycle operator training course.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000666

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General Counsel

Texas Department of Public Safety

Effective date: March 5, 2020

Proposal publication date: December 20, 2019

For further information, please call: (512) 424-5848



## SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

### 37 TAC §15.27

The Texas Department of Public Safety (the department) adopts amendments to §15.27, concerning Signature by Parent or Guardian for a Driver License. This rule is adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7864). The rule will not be republished.

These amendments are necessary because the 86th Texas Legislature enacted House Bill 2551, which added an agent with power of attorney for the parent to the persons authorized to sign for minor's driver license.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005,

which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000667

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Effective date: March 5, 2020

Proposal publication date: December 20, 2019

For further information, please call: (512) 424-5848



## SUBCHAPTER C. EXAMINATION REQUIREMENTS

### 37 TAC §15.55

The Texas Department of Public Safety (the department) adopts the amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. This rule is adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7865). The rule will not be republished.

The amendment is necessary because the 86th Texas Legislature enacted House Bill 3171, which repeals the requirement for a Class M license restricted to moped operation.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000668

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Effective date: March 5, 2020

Proposal publication date: December 20, 2019

For further information, please call: (512) 424-5848



## TITLE 43. TRANSPORTATION

### PART 3. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

## CHAPTER 57. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

**43 TAC §§57.9 - 57.11, 57.14, 57.15, 57.18, 57.22 - 57.27, 57.29, 57.30, 57.33, 57.34, 57.36, 57.41, 57.48 - 57.51, 57.58**

**INTRODUCTION.** The Motor Vehicle Crime Prevention Authority adopts amendments to 43 TAC Chapter 57, Motor Vehicle Crime Prevention Authority, in §§57.9 - 57.11, 57.14, 57.15, 57.18, 57.22 - 57.27, 57.29, 57.30, 57.33, 57.34, 57.36, 57.41, 57.48 - 57.51, and 57.58. The Authority adopts the amendments and the titles of Transportation Code, Part 3, and Chapter 57 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4663). These rules will not be republished.

**REASONED JUSTIFICATION.** The amended sections are necessary to implement Transportation Code Chapter 1006 as amended by Senate Bill (SB) 604 and House Bill (HB) 2048, 86th Legislature, Regular Session (2019). Chapter 1006 was amended to change the name of the "Automobile Burglary and Theft Prevention Authority" (ABTPA) to the "Motor Vehicle Crime Prevention Authority" (MVCPA) and delete the authority to implement a vehicle registration program. An amendment to Transportation Code §1006.153 increased the fee that insurers pay to the Authority.

The titles to Part 3 and Chapter 57 and sections throughout Chapter 57 were amended replacing references to ABTPA with MVCPA to implement the name change in SB 604.

Section 57.14(b)(3) deletes "Automobile Registration" from the list of MVCPA program categories eligible for consideration for funding. This deletion implements SB 604 which removed the Authority's authority to establish and fund a motor vehicle registration program.

Section 57.48(a) updates the referenced citation from Texas Civil Statutes, Article 4413(37), §10 to Transportation Code §1006.153 to reflect the current statute after recodification.

Section 57.48(a)(1) increases the statutory fee from \$2 payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals to \$4 payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals to implement the increase in HB 2048.

Section 57.48(a)(3) clarifies the type of insurance policy that is subject to the statutory fee by adding "insurance" after "motor vehicle;" adding "or automobile insurance" after motor vehicle; and updating the referenced citation from Texas Civil Statutes, Article 4413(37), §1(5) to Transportation Code Chapter 1006 to reflect the current statute after recodification.

Section 57.48(a)(4) increases the amount of the referenced statutory fee from \$2 to \$4 to implement the increase in HB 2048.

Section 57.49(a) and (b) update the referenced citation from Texas Civil Statutes, Article 4413(37), §10 to Transportation Code §1006.153 to reflect the current statute after recodification.

Section 57. 50 updates the referenced citation from Texas Civil Statutes, Article 4413(37), §10 to Transportation Code §1006.153 to reflect the current statute after recodification.

### SUMMARY OF COMMENTS.

The Authority received one written comment on the proposal.

#### Comment.

The commenter is concerned that insurance rates are already too expensive and suggests that the Authority focus on making insurance more effective and less profitable instead of raising fees.

#### Response.

The Authority appreciates the comment; however, it is beyond the scope of the rule project and the jurisdiction of the Authority. The Authority does not regulate the business of insurance. The \$2 increase in the fee in §57.48 only implements a required statutory change.

**STATUTORY AUTHORITY.** The Authority adopts amended §§57.9 - 57.11, 57.14, 57.15, 57.18, 57.22 - 57.27, 57.29, 57.30, 57.33, 57.34, 57.36, 57.41, 57.48 - 57.51, and 57.58 under SB 604, Section 5; House Bill 2048; and Transportation Code Chapter 1006.

Senate Bill 604, Section 5, 86th Legislature, Regular Session (2019), changed the name of the "Automobile Burglary and Theft Prevention Authority" to the "Motor Vehicle Crime Prevention Authority" and deleted the authority to implement a vehicle registration program.

House Bill 2048, Section 9, 86th Legislature, Regular Session (2019), increased the fee paid to the Authority from insurers from \$2 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer to \$4 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer.

Transportation Code, §1006.101(a), authorizes the Authority to adopt rules to implement the Authority's powers and duties.

**CROSS REFERENCE TO STATUTE.** Transportation Code Chapter 1006; and Transportation Code §1006.101(a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2020.

TRD-202000559

David Richards

General Counsel

Motor Vehicle Crime Prevention Authority

Effective date: March 1, 2020

Proposal publication date: August 30, 2019

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